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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL., PETITIONERS,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED SEPTEMBER 8, 1952
CERTIORARI GRANTED OCTOBER 27, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No.

N. E. POPE, A MINOR, AND NICK G. POPE, HIS GUARDIAN AD LITEM, PETITIONERS,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, A CORPORATION

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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[fol. 1]

IN THE SUPERIOR COURT OF BEN HILL COUNTY, GEORGIA

No. —

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Plaintiff,

vs.

N. E. POPE, Defendant

PETITION FOR INJUNCTION—Filed December 12, 1951

To the Superior Court of Ben Hill County, Georgia, and to the Honorable O. Wendell Horne, Jr., Judge thereof:

The petition of Atlantic Coast Line Railroad Company, a corporation, respectfully shows:

First

That the plaintiff, Atlantic Coast Line Railroad Company is, and was at the times herein stated, a corporation chartered under the laws of the State of Virginia, owning property, transacting business and having offices and agents in the County of Ben Hill, State of Georgia.

Second

The defendant, N. E. Pope, is and for many years has been a resident and citizen of Ben Hill County, Georgia.

Third

Plaintiff is and was at the times herein stated a common carrier of passengers and freight, operating lines of railroad in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama, including the operation of a line of railroad in the County of Ben Hill, State of Georgia.

Fourth

On or about the 20th day of August, 1951, the defendant, N. E. Pope, instituted action against the plaintiff in

the Circuit Court of Jefferson County, Alabama, claiming damages in the amount of Ten Thousand ($10,000.00) Dollars on account of personal injuries alleged to have been sustained by said defendant while engaged in the employ of [fol. 2] plaintiff, Atlantic Coast Line Railroad Company, at Westwood Shops in the County of Ben Hill and State of Georgia, due to the alleged negligence and carelessness of Atlantic Coast Line Railroad Company, its agents and employees. A copy of the complaint in said action is hereto attached as a part thereof, marked Exhibit "A", and for further particulars all due reference may be had thereto.

Fifth

N. E. Pope, the defendant herein, has been continuously a citizen and resident of the County of Ben Hill, State of Georgia, for 18 or more years and at all times during that period, Atlantic Coast Line Railroad Company and its predecessors has operated its lines of railroad and maintained regular offices and agents in said City of Fitzgerald, County of Ben Hill, State of Georgia, and in Wilcox, Irwin, Turner, and Coffee Counties which are adjacent to said county of Ben Hill, as well as in other counties in the State of Georgia in close proximity thereto; and defendant herein had a wide choice of convenient courts within the State of Georgia in which he might have instituted his action, as well as the District Court of the United States for the Middle District of Georgia, Americus Division, in which his case would have been tried at Americus, Georgia.

Sixth

The witnesses which the Atlantic Coast Line Railroad Company expects to use on its behalf in its defense of said action filed against it by N. E. Pope reside chiefly, if not wholly, in Ben Hill County, Georgia.

Seventh

The plaintiff herein is informed and believes that the defendant herein could not possibly have a single material witness residing outside of the State of Georgia, and County of Ben Hill.

[fol. 3] Eighth

In the event that such action is tried at Birmingham, Alabama, where it has been brought, it will be necessary for Atlantic Coast Line Railroad Company to transport a large number of witnesses, to wit, no less than six, to the City of Birmingham, Alabama, a distance of 313 miles or more, and to maintain them there at large expense awaiting and during the trial of said case.

Ninth

That in the trial of said cause at Birmingham, Alabama, the Atlantic Coast Line Railroad Company would be unable to compel the attendance by subpoena of such witnesses on its behalf and there exists grave doubt whether this plaintiff would be able to secure the voluntary attendance of all of such witnesses at the trial of said cause at Birmingham, Alabama. On the other hand, the attendance of all of the essential witnesses and production of necessary evidence on its behalf to defend said action would be compelled and obtained by the courts in the State of Georgia.

Tenth

The trial of said cause at Birmingham, Alabama, far distant from the place where said N. E. Pope resides and far distant from the place where his alleged cause of action arose will entail undue and prolonged absence of essential employees of the plaintiff from their customary occupation, which would seriously affect their uninterrupted operation of the railroad business of said Atlantic Coast Line Railroad Company in that the duties performed by such witnesses as experienced and essential employees whose places, if they can be filled at all during their absence, must be filled by less experienced employees, thereby greatly impeding the efficient operation of plaintiff's railroad lines; but if the case is tried at or in the vicinity of the residence of the defendant, or where his cause of action arose and where all of the principal fact witnesses reside, attendance upon the trial by the railroad employees will entail their absence [fol. 4] from their regular duties for only a short period of time.

Eleventh

On account of the facts and circumstances herein stated, plaintiff alleges that the action of the defendant, N. E. Pope, in thus attempting to escape the trial of said cause in the courts of the vicinity of his residence or in the vicinity of the place where the alleged cause of action arose will improperly, unreasonably, and inequitably burden and harass the plaintiff and will subject it to unnecessary and unreasonable inconvenience and expense and will operate as such a burden upon the efficient operation of plaintiff's lines of railroad, which are so indispensably necessary to the national defense and economy so as to constitute not only a burden upon interstate commerce, but also to impede the national defense effort.

Twelfth

The prosecution of the af-resaid action by the defendant, N. E. Pope, in the court at Birmingham, Alabama, will needlessly, vexatiously, and irreparably damage the plaintiff herein and also the public generally without any corresponding benefit to the defendant, and plaintiff verily believes that defendant's action has been brought at Birmingham, Alabama, not only for the purpose of avoiding the trial at or near his residence or at or near where his alleged cause of action arose, but also for the purpose of vexatiously harassing and annoying the plaintiff and subjecting it to unnecessary and unreasonable inconvenience and expense.

Thirteenth

Plaintiff is informed and believes that the condition of the dockets of the courts of this State and of this County, which are available to the defendant for the prosecution of his alleged cause of action aforesaid, are in such condition as to permit the fair, speedy and impartial trial of said cause of action.

Plaintiff further alleges that the prosecution of said cause of action by defendant in the Circuit Court of Jefferson [fol. 5] County, Alabama, imposes an unnecessary and oppressive burden upon that court in the trial of a cause of action wholly foreign to that jurisdiction between parties

who do not reside in Jefferson County, Alabama, thereby imposing upon the citizens and residents of that State and County an inequitable expense and undue burden upon such court in which said citizens and said court have no interest.

Fourteenth

Plaintiff alleges upon information and belief that N. E. Pope did not freely of his own volition and selection employ counsel at Birmingham, Alabama, but on the contrary, he was advised so to do by his Brotherhood representatives, and that such representatives assumed full charge of the alleged cause of action, and in fact, were the motivating force in the selection and employment of counsel at Birmingham.

Fifteenth

Plaintiff alleges upon information and belief that N. E. Pope purports to be represented at Birmingham by the firm of Jackson, Rives & Pettus, with offices in the Massey Building, Birmingham, Alabama, that in most instances said firm is not directly employed by the client which it purports to represent, but is employed by the reference of the case to it by representatives of the Railroad Brotherhoods.

Sixteenth

That during the past twenty-four months the firm of Jackson, Rives & Pettus has filed ten suits against the Atlantic Coast Line Railroad Company upon causes of action arising under the Federal Employers' Liability Act (45 U. S. Code, 51 et seq.), and that the plaintiffs in all except one of said suits were non-residents of the State of Alabama and all except one of said actions arose outside of the State of Alabama as follows:

Name of Plaintiff, Place of Accident, Residence of Plaintiff:

Annie Lois Presley, Admx., Estate of James G. Presley, Manchester, Ga., Georgia.
[fol. 6] J. T. Walthall, Manchester, Ga., Alabama.
E. C. Wright, Savannah, Ga., Georgia.
Andrew Poole, Cordele, Ga., Georgia.
G. I. Winn, Jr., LaGrange, Ga., Georgia.

Tom Burgess, Florence, S. C., South Carolina.
W. W. Barnes, Birmingham-Manchester, Georgia run, Georgia.
W. D. Walker, Nicholls, Ga., Georgia.
J. W. Wood, Jacksonville, Fla., Florida.
N. E. Pope, Fitzgerald, Ga., Georgia.

Seventeenth

The above acts of defendant are contrary to equity and good conscience and no adequate remedy is provided plaintiff at law.

Eighteenth

Plaintiff is without remedy against the wrongs herein alleged, except in a court of equity where matters of this kind are alone properly cognizant.

Nineteenth

Defendant is a minor above the age of fourteen years and it will be necessary that a guardian ad litem be appointed to represent the interests of said minor in this litigation.

Wherefore, the premises considered and waiving discovery, plaintiff prays:

(a) That this petition be sanctioned and ordered filed.
(b) That process do issue directed to said defendant, N. E. Pope, requiring him to be and appear within the time required by law to answer this complaint and that said defendant be served in the manner provided by law.
(c) That after the defendant, N. E. Pope, a minor, is served with a copy of this proceeding and order of court thereon, that the court appoint a guardian ad litem to represent the interests of said minor.
[fol. 7] (d) That at the hearing to be held at such time and place as may be fixed by the court an interlocutory injunction be granted restraining and enjoining the said defendant, his guardian, his next friend, his attorneys, agents, and any other person or persons acting at his direction or on his behalf from further proceeding in or the prosecution in any way of that certain action for damages referred to in paragraph 4 above, instituted by N. E. Pope, against Atlantic

Coast Line Railroad Company in the Circuit Court of Jefferson County, Alabama; claiming damages in the amount of $10,000.00, and also from either directly or indirectly doing or performing any act in connection with or in furtherance of said action, until the final trial of this cause.

(e) That upon the trial of this case a permanent injunction be granted restraining and enjoining the defendant, N. E. Pope, his guardian, his next friend, his attorneys, agents, representatives, and any other person or persons acting upon his direction or on his behalf from further proceeding on or the prosecution in any way of that certain action for damages referred to in Paragraph 4 above, instituted by N. E. Pope, against Atlantic Coast Line Railroad Company in the Circuit Court of Jefferson County, Alabama, claiming damages in the amount of $10,000.00, and also from either directly or indirectly doing or performing any act in connection with or in furtherance of said action.

(f) That a rule nisi issue requiring the said defendant, N. E. Pope, to show cause at such time and place as may be fixed therein, why an interlocutory injunction should not be granted as prayed for.

(g) That plaintiff have such other and further relief as may be equitable and just.

Jay, Garden, & Jay, Attorneys for Petitioner.
P. O. Address: Fitzgerald, Georgia.

[fol. 8] EXHIBIT A TO PETITION

Summons and Complaint

IN THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA

STATE OF ALABAMA,

Jefferson County:

To Any Sheriff of the State of Alabama . . . Greeting:

You are hereby commanded to summon Atlantic Coast Line Railroad Company, a corporation, to appear before the Circuit Court, to be held for said county, at the place of holding the same, within thirty (30) days from service of

this process, then and there to answer the complaint of N. E. Pope, a minor, 18 years of age, who sues by his father and next friend, Nick G. Pope.

Witness my hand this 20 day of August, 1951.

Julian Swift, Clerk.

N. E. Pope, a minor 18 years of age, who sues by his father and next friend, Nick G. Pope, Plaintiff,

vs.

Atlantic Coast Line Railroad Company, a corporation, Defendant

Count One

The plaintiff, N. E. Pope, a minor 18 years of age, who sues by his father and next friend, Nick G. Pope, claims of the defendant the sum of Ten Thousand Dollars ($10,000.00) as damages for that, heretofore, on, to wit, the 5th day of April, 1951, the defendant was engaged in the business of operating a railroad for the transportation of freight, passengers and express in interstate commerce, and in connection therewith owned and operated what was generally known as the Westwood Shops at Fitzgerald, Georgia, and plaintiff avers that on said date, plaintiff was employed by the defendant as a Carman Apprentice at said Westwood Shops and that a part of plaintiff's duties as such employee of the defendant was in the furtherance of such aforesaid [fol. 9] interstate commerce, or directly, or closely and substantially affected such interstate commerce, and plaintiff avers that on said date of April 5, 1951, while plaintiff was assisting two other employees of the defendant in installing an equalizer in the trucks of a railroad express car one of said employees of the defendant, while acting within the line and scope of his employment by the defendant and while engaged in such aforesaid interstate commerce, negligently caused or negligently allowed said equalizer to slip or to drop and to catch the fourth finger on plaintiff's left hand and plaintiff avers that as a proximate consequence of said negligence, he was injured and damaged as follows: The first joint of the fourth finger on the plaintiff's left hand was mashed off

and plaintiff's said finger was permanently injured and the use thereof permanently impaired, and plaintiff was caused to suffer great physical pain and mental anguish and will be caused to suffer great physical pain and mental anguish in the future, and his nerves and nervous system were shocked and permanently injured and plaintiff was caused to lose time from his employment and his power and capacity to work and earn money has been permanently impaired. Plaintiff avers that this cause of action is based upon and brought under what is generally known as the Federal Employers' Liability Act, enacted by the Congress of the United States for the benefit and protection of employees of common carriers by railroads engaged in interstate commerce.

Count Two

The plaintiff, N. E. Pope, a minor 18 years of age, who sues by his father and next friend, Nick G. Pope, claims of the defendant the sum of Ten Thousand Dollars ($10,000.00) as damages for that, heretofore, on, to wit, the 5th day of April, 1951, the defendant was engaged in the business of operating a railroad for the transportation of freight, passengers, and express in interstate commerce, and in connection therewith owned and operated what was generally [fol. 10] known as the Westwood Shops at Fitzgerald, Georgia, and plaintiff avers that on said date, plaintiff was employed by the defendant as a Carman Apprentice at said Westwood Shops and that a part of plaintiff's duties as such employee of the defendant was in the furtherance of such aforesaid interstate commerce, or directly, or closely and substantially affected such interstate commerce, and plaintiff avers that on said date of April 5, 1951, while plaintiff was assisting two other employees of the defendant in installing an equalizer in the trucks of a railroad express car, the said equalizer slipped or dropped and caught the fourth finger on plaintiff's left hand and plaintiff was thereby caused to be injured and damaged as follows: The first joint of the fourth finger on the plaintiff's left hand was mashed off and plaintiff's said finger was permanently injured and the use thereof permanently impaired, and plaintiff was caused to suffer great physical pain and mental anguish and will be caused to suffer great physical pain and

mental anguish in the future, and his nerves and nervous system were shocked and permanently injured and plaintiff was caused to lose time from his employment and his power and capacity to work and earn money has been permanently impaired, and plaintiff avers that all of his said injuries and damages proximately resulted, in whole or in part, from the negligence of an officer, agent, or employee of the defendant and while engaged in such aforesaid interstate commerce, or by reason of a defect, or insufficiency, due to the negligence of the defendant, in its cars, engines, appliances, machinery, works or other equipment. Plaintiff avers that this cause of action is based upon and brought under what is generally known as the Federal Employers' Liability Act, enacted by the Congress of the United States for the benefit and protection of employees of common carriers by railroads engaged in interstate commerce.

Jackson, Rives & Pettus, by A. G. Rives, Attorneys for Plaintiff.

[fol. 11] Plaintiff demands a jury trial.

Jackson, Rives & Pettus, by A. G. Rives, Attorneys for Plaintiff.

[fols. 12-15] *Duly sworn to by C. C. Howell. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 16] IN BEN HILL SUPERIOR COURT

[Title omitted]

GENERAL DEMURRER—Filed December 26, 1951

Now comes the defendant in the above styled cause and before pleading thereto demurs generally to the petition upon the following grounds, to wit:

1

That said petition sets forth no cause of action against this defendant.

2

That the facts set forth in said petition do not entitle the plaintiff to the equitable relief prayed for.

3

That said petition does not allege or show any legal or equitable ground for the relief sought therein.

4

That said petition sets forth no facts which would authorize the Court to grant any equitable relief because of laches therein disclosed.

Wherefore, defendant prays that these his demurrers be inquired of by the court and sustained and the petition of plaintiff dismissed.

J. C. McDonald, T. J. Lewis, Attorneys for Defendant.

[File endorsement omitted.]

[fols. 17-28] [File endorsement omitted]

IN THE BEN HILL SUPERIOR COURT

[Title omitted]

ORDER SUSTAINING GENERAL DEMURRER—Filed February 15, 1952

After hearing argument on the general demurrer filed by the defendant in the above stated cause, it is hereby ordered that said general demurrer be, and the same is hereby sustained.

In the event the plaintiff files a bill of exceptions in this case within the time allowed by law and pays all accrued court costs, it is hereby ordered that supersedeas be granted in order to preserve the rights of the parties until the judgment of the Supreme Court of Georgia can be had and it is hereby ordered that the defendant, N. E. Pope, his guardian, his next friend or any other person or persons

acting upon his direction or on his behalf, be restrained from further proceeding on or prosecuting in any way that certain action for damages referred to in the petition in the above stated case and filed by the defendant, N. E. Pope, against the plaintiff, Atlantic Coast Line Railroad Company, in the Circuit Court of Jefferson County, Alabama, until such time as final judgment in this cause has been rendered in the Supreme Court of the State of Georgia and the remittitur thereon is received by this court from the Supreme Court of Georgia.

So ordered at Chambers this 7th day of February, 1952.

O. Wendell Horne, Jr., Judge Superior Court Cordele, Judicial Circuit.

[fol. 29] IN THE SUPREME COURT OF GEORGIA

No. 17843

ATLANTIC COAST LINE RAILROAD COMPANY

v.

POPE et al.

OPINION—May 13, 1952

By the COURT:

1. A court of equity in this State has jurisdiction to restrain a resident thereof from maintaining a suit in a court of a foreign State upon a cause of action arising in Georgia, upon the complaint of the defendant in the foreign action, who is subject to the jurisdiction of the courts of this State, where the foreign suit has for its purpose or necessary effect the obtaining of an inequitable or unconscionable advantage over the complainant.

2. The provisions of section 6 of the Federal Employers Liability Act (45 U. S. C. A. § 56) do not prohibit the courts of this State from restraining an employee, a resident of Georgia, from prosecuting an action for damages upon the cause of action arising in this State in a court of a foreign State against his employer, a railroad, which is subject to the jurisdiction of the courts of this State.

3. The petition in the instant case was sufficient to allege a cause of action for the equitable relief sought, and it was error to sustain the general demurrers and dismiss the action.

[fol. 30] ALLEN, Justice:

Atlantic Coast Line Railroad Company, hereinafter referred to as the employer, brought its petition in equity to restrain N. E. Pope, hereinafter referred to as the employee, from prosecuting his action in the Circuit Court of Jefferson County, Alabama, under the Federal Employers' Liability Act, for alleged personal injuries sustained in Ben Hill County, Georgia, his place of residence. The substance of the employer's complaint was that the employee's suit was brought in the Alabama court for the purpose of unreasonably and inequitably burdening the employer and subjecting it to unnecessary and unreasonable inconvenience and expense, and for the purpose of vexatiously harassing and annoying the employer. The prayers were for an injunction restraining the employee from further proceeding in the prosecution of the Alabama suit. The general demurrers of the employee were sustained and the petition was dismissed. The case is here on a writ of error complaining of that judgment.

1. The power of a court of equity to restrain a person within its jurisdiction from prosecuting a suit in a court of a foreign State rests upon the basis that the person whom it is sought to enjoin is under the jurisdiction of the court and can be prevented from doing an inequitable thing. Engel v. Scheuerman, 40 Ga. 206; Ambursen Hydraulic Construction Co. v. Northern Contracting Co., 140 Ga. 1, 7 (78 S. E. 340, 47 L. R. A. (N.S.) 684). When both parties to an action in a foreign State are domiciled in this State, a court of equity in this State can in personam direct the parties, by injunction, to proceed no further in such State. Such power is not to be exercised capriciously, nor to compel litigants to use the courts of this State, nor because the complainant in the equity suit has good reason to apprehend a less favorable result in the foreign court; but it is neces-
[fol. 31] sary that the complainant show that the action has for its purpose or necessary effect the obtaining of an in-

equitable or unconscionable advantage over the complainant. McDaniel v. Alford, 148 Ga. 609 (97 S. E. 673). See Manning v. French, 133 U. S. 186; 2 Story's Equity Jurisprudence (14th ed.) § 1224; 4 Pomeroy's Equity Jurisprudence (5th ed.) § 1360. When such power is used, it acts only against the person of the resident plaintiff in the foreign suit, and not against the court itself, and should be exercised where not to exercise the power would be incompatible with equity and good conscience. The consideration in granting an injunction should overbalance the right of the party to bring his action in another State having jurisdiction of the parties and cause of action. O'Loughlin v. O'Loughlin, 6 N. J. 170 (78 Atl. 2d, 64); McWhorter v. Williams (Ala.), 155 So. 309. It has been held that a court of equity, upon equitable considerations, may enjoin a resident of the State from maintaining an action in a foreign jurisdiction, which arose in a State having jurisdiction of the parties and cause of action, where the local court had first acquired jurisdiction (Ambursen Hydraulic Construction Co. v. Northern Contracting Co., supra); where the foreign action was brought to perpetrate a fraud or to oppress wrongly the opposite party (Missouri Pac. Ry. Co. v. Harden, 158 La. 889, 105 So. 2; Chicago, M. & St. P. Ry. Co. v. McGinley, 175 Wis. 565, 185 N. W. 218); to obtain an undue advantage (Pere Marquette Ry. Co. v. Slutz, 268 Mich. 388, 256 N. W. 458); or to evade the law of the domicile (McWhorter v. Williams, supra). It has also been held that in such cases injunctive relief will be refused where the party can obtain full and adequate relief in the jurisdiction where the action is pending (Bank of Pittsburgh, National Association v. United Electric Coal Co., 9 Del. Ch. 151, 142 Atl. 368; Wabash Ry. Co. v. Peterson, 197 Iowa 1331, 175 N. W. 523; Guggenheim v. Wahl, 203 N. Y. 390, 96 N. E. 726; or where the relief, if granted, [fol. 32] would be unenforceable (Federal Trust Co. v. Conklin, 87 N. J. Eq. 185, 99 Atl. 109; Grover v. Woodward, 91 N. J. Eq. 250, 109 Atl. 822); or where the plaintiff merely prefers his own court (American Express Co. v. Fox, 135 Tenn. 489, 187 S. W. 1117); or distrusts the court of the foreign State (Columbian Nat. Life Ins. Co. v. Cross, 298 Mass. 47, 9 N. E. 2d, 402; United States Fire Ins. Co. v. Fleenor, 179 Va. 268, 18 S. E. 2d, 904); or be-

cause of differences in the laws of the two States as to the measure of damages (Tri-State Transit Co. of Louisiana v. Mondy, 194 Miss. 714, 12 So. 2d, 920); or because of the possibility of a larger verdict in the foreign action (Boston & M. R. v. Whitehead, 307 Mass. 106, 29 N. E. 2d, 916); or because of a mere consideration of expense or inconvenience as to the party's witnesses and preparation for trial of the foreign action (Chicago, M. & St. P. Ry. Co. v. Schendel, 292 Fed. 126; Missouri-Kansas-Texas R. Co. v. Ball, 126 Kan. 745, 271 Pac. 313; Bavuso v. Angwin, 166 Kan. 469, 201 Pac. 2d, 1057). For annotations on the subject, "Injunction by State courts against action in court of another State," see 91 A. L. R. 570, 115 A. L. R. 241, 6 A. L. R. 2d, 896. See also "The Doctrine of Forum Non Conveniens," 29 Columbia Law Review 1; Gulf Oil Corp v. Gilbert, 330 U. S. 501 (67 Sup. Ct. 839, 91 L. ed. 1055).

2. It is contended by counsel for the employee that the provisions of the Federal Employers' Liability Act (45 U. S. C. A. § 56), and certain decisions of the United States Supreme Court applying this section of the act, prevent a court of equity in this State from enjoining the employee from maintaining the suit in the Alabama State court; that, under this section of the act, the employee had a right to bring in his action in Jefferson County, Alabama, the railroad being subject to the jurisdiction of the courts of that county. It is insisted that the rulings in Baltimore & Ohio Railroad Co. v. Kepner, 314 U. S. 44 (62 Sup. Ct. 6, 86 L. ed. 28, 136 A. L. R. 1222), and Miles v. Illinois Central Railroad Co., 315 U. S. 698 (62 Sup. Ct. 827, 86 L. ed. 1129, [fol. 33] 146 A. L. R. 1104), prohibit the courts of this State from granting injunctive relief in cases of this nature. In the Miles case it was held that section 6 of the Federal Employers' Liability Act prevents a State court from enjoining, on the ground of inconvenience and expense, a resident citizen from prosecuting an action under said act in a State court of another jurisdiction which has jurisdiction of the parties and the cause of action. The Kepner case held that a State court, where the cause of action arose, and where the parties resided, could not enjoin the employee from maintaining his action in a Federal court of another State, upon the ground of inequity, vexatiousness, and

harassment. In the Miles case, which was a 5 to 4 decision, Mr. Justice Reed, speaking for the majority, said: "As Congress has permitted both the State and Federal suits, its determination that the carriers must bear the incidental burden is a determination that the State courts may not treat the normal expense and inconvenience of trial in permitted places, such as the one selected here, as inequitable and unconscionable." P. 705. Mr. Justice Frankfurter, in a dissenting opinion, which was concurred in by Chief Justice Stone and Justices Roberts and Byrnes, said: "The power of equity to restrain the prosecution of unconscionable suits has been part of the very fabric of the State courts as we have known them in our whole history. And nothing in the Federal Employers' Liability Act, its language, its history, or its policy, warrants a denial of this power to the States." P. 721.

From what was said by some members of the court in those cases, as to causing employers unnecessary expense and inconvenience in trying cases in courts far removed from where the cause of action arose and the employees resided, it is apparent that they recognized the unfairness to the employers, but were of the opinion that relief could be granted only by Congress, and not by the court. In 1948, Congress enacted section 1404 (a) of Title 28, U. S. C. A., as follows: "For the convenience of parties and [fol. 34] witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Its effect was to adopt in statutory form the doctrine of forum non conveniens, or the principle of Anglo-American law that a court having jurisdiction may decline to exercise it on considerations of convenience, efficiency, and justice. In Ex Parte Collett, 337 U. S. 55 (69 Sup. Ct. 944, 93 L. ed. 1207), the court had before it the question as to whether the 1948 amendment to the Judiciary Act quoted above was applicable to a cause of action under the Federal action under the Federal Employers' Liability Act, brought in a Federal district court of Illinois for a cause of action arising in Kentucky, where the employee and all the witnesses resided. It was held that this amendment did apply to actions under the Federal Employers' Liability Act, and that the Federal district court of Illinois did not err in transferring

the case to Kentucky. In Southern Railway Co. v. Mayfield, 340 U. S. 1 (71 Sup. Ct. 1, 95 L. ed. 3), the court had before it the question as to whether or not a State court was free to apply the doctrine of forum non conveniens to a transitory cause of action, where the plaintiff was a resident of a foreign State wherein the cause of action arose. Mr. Justice Frankfurter, who had dissented in the Miles and Kepner cases, speaking for the majority of the court, said that the Missouri court was free to apply the doctrine of forum non conveniens provided it did not contravene any constitutional right of the employee to maintain his action or violate any established rule of State procedure. It was held that there was nothing in the Federal Employers' Liability Act prior to the act of 1948 (28 U. S. C. A. § 1404 (a), supra) which purported to force a duty upon a State court to entertain or retain a suit upon any transitory cause of action "against an otherwise valid excuse." In a concurring opinion, Mr. Justice Jackson said: "The Missouri court appears to have acted under the supposed compulsion of Miles v. Illinois Central R. Co., 315 U. S. 698, among [fol. 35] others of this court's decisions. The deciding vote in that case rested, in turn, only on what seemed to be compulsion of statutory provisions as to venue. By amendment, 28 U. S. C. § 1404(a), as interpreted in Ex Parte Collett, 337 U. S. 55, Congress has removed the compulsion which determined the Miles case, and the Missouri court should no longer regard it as controlling. A Federal court in Missouri would now be free to decline to hear this case and could transfer it to its proper forum. Certainly a State is under no obligation to provide a court for two non-resident parties to litigate a foreign-born cause of action, when the Federal Government, which creates the cause of action, frees its own courts within that State from mandatory consideration of the same case." p. 576.

From these decisions, it is clear that the rulings in the Miles and Kepner cases, supra, are no longer controlling on the question now before us. It being clear from the decisions in the Collett and Mayfield cases, supra, that the courts in the State where transitory causes of action are pending have a right to apply the doctrine of forum non conveniens, no sound reason exists why a court of equity, where the employee resides and where the cause of action

arose, having jurisdiction of the parties, cannot, in a proper case, on equitable principles, restrain the employee from prosecuting his action under the Federal Employers' Liability Act in a court of a foreign State. Whatever uncertainty was occasioned by the Miles and Kepner cases arose, perhaps from the sharp conflict in the views of the members of the court, the narrow numerical division of the court, and the wavering circumstances of time and events. At least for the present, the views of the minority in the Miles and Kepner cases are the views of the majority in Ex Parte Collett and Southern Railway Co. v. Mayfield, supra. We are bound by controlling decisions of the United States Supreme Court as of today. Sufficient unto the day is the decision thereof.

[fol. 36] We are therefore of the opinion that there is nothing in the Federal Employers' Liability Act, or in the currently prevailing decisions of the United States Supreme Court construing this act, that prevents a court of equity in this State from exercising jurisdiction in cases of the character here under consideration.

3. The only question that remains for decision is: did the allegations of the petition of the employer set forth sufficient facts from which the conclusion could be drawn that the action of the employee in a foreign State had for its purpose and necessary effect the obtaining of an inequitable and unconscionable advantage over the employer? We are of the opinion that they did. In substance, the facts alleged in the employer's petition were: The employee transacts business in Ben Hill County, Georgia, and has an office and agent therein. The employee is a resident of that county, and has instituted an action against the employer in the Circuit Court of Jefferson County, Alabama, 313 miles or more distant from the county of his residence, claiming damages in the sum of $10,000 on account of personal injuries alleged to have been sustained by him while in the employ of the employer at Fitzgerald, Ben Hill County, Georgia (a copy of the suit attached to the petition showing that the action was brought under the Federal Employers' Liability Act). The employee had a wide choice of convenient courts within the State of Georgia in which he might have instituted his action, as well as in the District Court of the United States for the

Middle District of Georgia, Americus Division. The employer's witnesses, not less than 6, which it expects to use in its defense of the Alabama suit, reside chiefly in Ben Hill County, and it will be necessary to transport these witnesses to Birmingham, Alabama, at a large expense and maintain them while awaiting and during the trial; the employer would be unable to compel the attendance of witnesses by subpoena, whereas such attendance could be compelled if the action had been brought in Geor- [fol. 37] gia. A trial in Birmingham would entail undue and prolonged absence of essential employees from their customary occupations, and would severely affect the operation of the business of the employer; the employee's action will unnecessarily and unreasonably burden and harass the employer, subjecting it to unnecessary and unreasonable inconvenience and expense, imposing a burden upon the efficient operation of its lines of railroad, which is indispensable to the national defense. The employer "verily believes that defendant's action has been brought at Birmingham, Alabama, not only for the purpose of avoiding a trial at or near his residence or at or near where his alleged cause of action arose, but also for the purpose of vexatiously harrassing and annoying the plaintiff and subjecting it to unnecessary and unreasonable inconvenience and expense." The condition of the courts' dockets in this State, which are available to the employee for the prosecution of his action, is such as to permit a fair, speedy, and impartial trial. During the past 24 months counsel for the employee have filed 10 suits against this railroad upon causes of action arising under the Federal Employers' Liability Act; in 9 of these cases the plaintiffs were nonresidents of Alabama; and in all of these 9 cases the cause of action arose outside the State of Alabama.

If the defendant had brought this action in a State court of Georgia, which he had a right to do under the Federal Employers' Liability Act, he would have had to bring it in Ben Hill County. Code, § 94-1101. Or, he could have brought it in the Federal court of the district in which the cause of action arose, or in the Federal court of any district in which the railroad was doing business at the time of the commencement of the action. At that time, the employee had more than one court or place in Georgia in

which he could have brought his suit. A trial in any of these jurisdictions would not entail the expense or inconvenience that a trial in Birmingham would involve: The employee in bringing his suit in Alabama could have brought it in any Federal district court in which the em- [fol. 38] ployer was doing business in Alabama. If he had done so, the employer could have invoked the doctrine of forum non conveniens, and such Federal court would have had the power to transfer the case to a district court in Georgia, in which it could have originally been brought (Collett case, supra); but the employer could not invoke such doctrine in the pending action in the Alabama court, for the reason that the Alabama Supreme Court held in Ex Parte State ex rel. Southern Ry. Co., 254 Ala. 10 (47 So. 2d, 249), in a case identical with the one here under consideration, that under a statute of Alabama (Alabama Code 1940, Title 7, § 97), it was mandatory that the courts of Alabama take jurisdiction of a transitory cause of action, and that the doctrine of forum non conveniens was not applicable. In selecting a State court of Alabama, the employee has thus denied to the employer the equitable right of invoking the doctrine of forum non conveniens, which it would have had if the action had been brought in a Federal court of that State. Likewise, if the employee had brought his action in either the Northern or Southern District Federal Court in Georgia, the employer would have had the right to invoke such doctrine, and such court would have had the power to transfer the case to the Middle District Federal Court. Under the facts alleged in the petition here under consideration, the employee's action could have been prosecuted in the Superior Court of Ben Hill County, Georgia, without an unreasonable delay. The employee is a resident of Ben Hill County, where the cause of action arose. Most of the witnesses for both parties reside here. If the case is tried in Birmingham, Alabama, 313 miles distant from the employee's home, the employer will be put to the expense of transporting witnesses to and from Birmingham, as well as the expenses incident to their stay there during the trial. The Georgia witnesses cannot be compelled to attend the trial in person; and it will entail additional expense in taking their testimony; and the employer would be deprived of having the personal presence of the wit-

nesses before the jury, which it would have in Georgia. [fol. 39] Nothing appearing in the petition to justify the employee in selecting a forum more than 300 miles from his home, and where the cause of action arose, other than his right to do so under a Federal statute, and it appearing that the employer will be put to unreasonable expense and inconvenience in trying the case in Alabama, we are authorized to draw the conclusion that the employee's purpose in filing the action in the Alabama court was to obtain an inequitable and unconscionable advantage over the employer. As was said by Mr. Justice Jackson in Miles v. Illinois Central R. Co., 315 U. S. 698 (supra), at page 706: "The judiciary has never favored this sort of shopping for a forum. It has sought to protect its own good name as well as to protect defendants by injunctions against the practice of seeking out soft spots in the judicial system in which to bring particular kinds of litigation." As to similar rulings of courts of other jurisdictions on like facts, see Bankers Life Co. v. Loring, 217 Iowa 534, 250 N. W. 8; New York, C. & St. L. R. Co. v. Matzinger, 136 Ohio St. 271, 25 N. E. 2d, 349; Reed's Administratrix v. Illinois Central R. Co., 182 Ky. 455, 206 S. W. 794. Also see 49 Mich. Law Review 1061; 30 North Carolina Law Review, 168.

Our ruling is not in conflict with Southern Ry. Co. v. Parker, 194 Ga. 94 (21 S. E. 2d, 94). That case simply held that the courts of Georgia have jurisdiction over transitory causes of action, though the plaintiff was a nonresident of Georgia and the cause of action arose in another State, the defendant therein being subject to the jurisdiction of the courts of this State. The court there dealt, solely with the question of jurisdiction, and expressly declined making any ruling on the question of the power of the court to refuse jurisdiction on the grounds of expense or inconvenience, or its right on equitable grounds to restrain such action. See page 104 of that decision. Nor is our ruling contrary to McDaniel v. Alford, 148 Ga. 609, supra. The action there sought to be enjoined was pending in Hamilton County, Tennessee, only a few miles removed from where the cause of action arose, and from where the [fol. 40] parties resided, in Catoosa County, Georgia. There the two counties were separated only by a State line.

The case of Boyd v. Grand Trunk Railroad Co., 338 U. S. 263 (70 Sup. Ct. 26, 94 L. ed. 55), relied on by counsel for the employee, has no application to the facts in the instant case. It was there held that an agreement between a railroad company and an employee injured by its negligence, which limited the venue of any action by him under the Federal Employers' Liability Act, illegally deprived him of his right to bring his action in any forum, and was void. That case did not involve any question of expense or inconvenience. The recent case of Atlantic Coast Line Railroad Co. v. Wood, decided by the Supreme Court of Florida on April 4, 1952, has been called to our attention. We do not share the view that the Miles case, supra, continues to shackle the State courts of equity.

The petition was sufficient as against the general demurrers of the employee, and it was error to sustain the demurrers and dismiss the action.

Judgment reversed. All the Justices concur. Duckworth, C. J., concurs in the judgment but not in all that is said in the opinion.

[fols. 41-64] IN THE SUPREME COURT OF GEORGIA

JUDGMENT—FILED May 13, 1952

ATLANTIC COAST LINE RAILROAD CO.

v.

N. E. POPE ET AL.

This case came before this court upon a writ of error from the Superior Court of Ben Hill County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed because the court erred in sustaining the general demurrers and dismissing the petition. All the Justices concur. Duckworth, C. J., concurs in the judgment but not in all that is said in the opinion.

[fols. 65-67] IN THE SUPREME COURT OF GEORGIA

[Title omitted]

ORDER DENYING REHEARING—June 11, 1952

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Atkinson, P. J., not participating.

[fol. 68] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO PRINTED RECORD—FILED August 29, 1952

Pursuant to Rule 38, par. 8 of the Supreme Court of the United States it is stipulated and agreed by and between counsel for the above-named parties that there may be omitted from the printed record in the above-entitled cause the following matter not essential to the questions presented by the writ of certiorari to be filed herein:

1. Order and rule nisi on original petition. (R. 13)
2. Order appointing guardian ad litem for N. E. Pope and entry of service thereon. (R. 14)
3. Bill of Exceptions (R. 19)
4. Exhibit A(1) to Bill of Exceptions (R. 24)
5. Exhibit A(2) to Bill of Exceptions (R. 25)
6. Certificate and order of Judge of Superior Court of Ben Hill County to Bill of Exceptions. (R. 26)
7. Acknowledgment of Service of Bill of Exceptions (R. 26)
8. Certificate of Clerk of Superior Court of Ben Hill County of filing of Bill of Exceptions, certificate and acknowledgment of service (R. 27)
9. Certificate of Clerk, Supreme Court of Georgia of filing of Bill of Exceptions (R. 28)
10. Motion for Rehearing (R. 42)
11. Certificate of Counsel to Motion for Rehearing (R. 58)
12. Certificate of Deputy Clerk, Supreme Court of Georgia, of filing of Motion for Rehearing (R. 58)

13. Reponse to Motion for Rehearing (R. 59)

[fol. 69] 14. Certificate of counsel of service of Response to Motion for Rehearing (R. 63)

15. Certificate of filing Response to Motion for Rehearing in Office of Clerk, Supreme Court of Georgia (R. 64)

16. Petition for stay of remittitur and order thereon (R. 66)

17. Certificate of Deputy Clerk, Supreme Court of Georgia, of Record.

It is further stipulated and agreed that should the Clerk of the Supreme Court of the United States deem it necessary or desirable to include any of the foregoing in the printed record, he is authorized to do so.

This the 22nd day of August, 1952.

1. Richard M. Maxwell, 738-50 Seventh St., N. E., Atlanta, Georgia.
2. Thomas J. Lewis, Attorneys for Petitioner, 1209 First Nat'l Bank Bldg., Atlanta 3, Georgia.
3. C. C. Howell, c/o Atlantic Coast Line Railroad Company, Wilmington, N. C.
4. Douglas W. Matthews, 1417 First Nat'l Bank Bldg., Atlanta 3, Georgia.
5. Allan C. Garden, Attorneys for Respondent, P. O. Box No. 308, Fitzgerald, Georgia.

[fol. 70] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 322

N. E. POPE, et al., Petitioners;

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ORDER ALLOWING CERTIORARI—Filed October 27, 1952

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted. Counsel are requested to discuss in their briefs and on oral argument the question whether the judgment sought to be reviewed is final within the meaning of 28 U.S.C. Sec. 1257.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

Section 1404(a) of the Judicial Code, 28 U.S.C.A. Sec. 1404(a) reads as follows:

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

C. Pertinent Decisions of This Court

In chronological order, the pertinent decisions of this Court are the following:

Baltimore & Ohio R. Co. v. *Kepner*, 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28.

Miles v. *Illinois Cent. R. Co.*, 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129.

Ex Parte Collett, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207.

Boyd v. *Grand Trunk Western R. Co.*, 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55.

State of Missouri ex rel Sou. Ry. Co. v. *Mayfield*, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3.

These decisions we shall discuss as briefly as possible, seratim.

Baltimore & Ohio R. Co. v. *Kepner*, *supra*, arose on a bill filed in an Ohio State Court by the railroad company to en-

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA AND BRIEF IN SUPPORT OF PETITION.

RICHARD M. MAXWELL,
THOMAS J. LEWIS,
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Atlanta, Georgia,
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THOMAS J. LEWIS, JR.,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

To The Honorable Chief Justice of the United States and to The Honorable Associate Justices of The Supreme Court of the United States:

Petitioner, N. E. Pope, et al., prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered in the above cause (R. 22) on May 13, 1952 and numbered and entitled in said Court "Atlantic Coast Line Railroad Company, Plaintiff-in-error vs. N. E. Pope, et al., Defendant-in-error, Number 17843". Petition for rehearing was denied by said Court on June 11, 1952 (R. 23) at which time the judgment of said Court became final.

I. Jurisdiction

The jurisdiction of this Court is founded on Title 28 United States Code, Sec. 1257(3), a right being especially claimed under the statutes of the United States, viz, 45 U. S. C. Sec. 56, 45 U. S. C. A. Sec. 56.

II. Statutes Involved

This case involves the Federal Employers' Liability Act (45 U. S. C. Sec. 51-59) and the Forum Non Conveniens section of the Judicial Code (28 U. S. C. Sec. 1404(a)).

III. Question Presented

The question presented is whether or not a resident of Georgia can be enjoined by a Court of the State of Georgia from proceeding with the prosecution of an action brought under the Federal Employers' Liability Act in a Court of the State of Alabama.

IV. Summary Statement of Matter Involved

Petitioner, a resident of Ben Hill County, Georgia, sued Respondent in the Circuit Court of Jefferson County, Alabama, under the Federal Employers' Liability Act for injuries sustained in Ben Hill County, Georgia.

Approximately five months later Respondent filed suit in Ben Hill County, Georgia, to enjoin Petitioner from further prosecuting the Alabama suit on the grounds of expense, inconvenience, vexatiousness, harassment, burden on interstate commerce, more convenient forum in Georgia, and impeding the operation of Respondent's railroad and the national defense effort.

Petitioner demurred generally to Respondent's petition and, after hearings, the Judge of Superior Court sustained the demurrer but granted supersedeas and enjoined Petitioner from further proceeding with the Alabama ac-

tion pending final decision of the case by the Supreme Court of Georgia and receipt of remittitur therefrom.

On appeal, the Supreme Court of Georgia reversed and Petitioner's motion for rehearing was denied. Petitioner's motion for stay of remittitur was granted to permit this Petition for Certiorari.

V. Reasons for Allowance of Writ

1. The case here involves two statutes of the United States; 45 U. S. C. A. Sec. 56 and 28 U. S. C. A. Sec. 1404(a). Through it this Court has the opportunity to decide what effect, if any, the enactment by the Congress of Section 1404(a) of the Judicial Code had upon Section 56 of 45 U. S. C. A. (The Federal Employers' Liability Act) as applied by this Court in *Miles* v. *Illinois Central Railroad Company*, 315 U. S. 698, 62 S. Ct. 829, 86 L. Ed. 1129.

This is a federal question of substance not heretofore determined by this Court.

2. The Supreme Court of Georgia and the Supreme Court of Florida have rendered conflicting opinions and have reached opposite conclusions in considering the question. *Atlantic Coast Line Railroad Company* v. *Pope*, (1952) — Ga. —, 71 S. E. (2d) 243 (this case), and *Atlantic Coast Railroad Company* v. *Wood*, — Fla. —, (1952), 58 So. (2d) 540. Such a conflict between the highest courts of the States can only be resolved by a decision of this Court, and should be resolved in order to bring about uniformity in federal rights granted by a federal Act.

Prayer

WHEREFORE, Petitioner prays that this petition be granted, and for such other and further relief in the premises as may be proper and just.

This the 27th day of August, 1952.

THOMAS J. LEWIS,
RICHARD M. MAXWELL,
Attorneys for Petitioner.

THOMAS J. LEWIS, JR.,
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1203 First National Bank Bldg.,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I. Opinion Below

The opinion of the Supreme Court of Georgia has not yet been officially reported, but is set forth in 71 S. E. (2d) 243 and in the Record, p. 12.

II. Jurisdiction of Court

The jurisdiction of this Court is invoked under Title 28 U. S. Code Sec. 1257 (3), a final judgment having been rendered by the Supreme Court of Georgia, the highest court of the state in which a decision could be had, wherein a right, privilege and immunity is set up and claimed by Petitioner under a statute of the United States, viz, Title 45 U. S. Code Sec. 56, 45 U. S. C. A. Sec. 56.

III. Statement of the Case

On or about the 20th of August, 1951, Petitioner, a resident of Georgia, brought suit against Respondent, a Virginia Corporation, doing business in Jefferson County, Alabama, in the Circuit Court of Jefferson County, Alabama, under the Federal Employers' Liability Act (45 U. S. C. A. Sec. 51 et seq.) for personal injuries sustained in Ben Hill County, Georgia.

Thereafter and on or about December 12, 1951 Respondent filed suit for injunction against Petitioner in the Ben Hill Superior Court, Georgia, to enjoin Petitioner from further prosecuting his suit in the Circuit Court of Jefferson County, Alabama (R. 1). The petition alleged that plaintiff is a Virginia Corporation subject to service of process in Ben Hill County, Georgia (R. 1); that defendant is a resident and citizen of Ben Hill County, Georgia (R. 1); that defendant has sued plaintiff in the Circuit Court of Jefferson County, Alabama, copy of petition herein attached (R. 1, 2); that defendant could have sued plaintiff on his cause of action in the state courts of Georgia as well as in the District Court of the United States for the Middle District of Georgia (R. 2); that plaintiff's witnesses in the case reside in Ben Hill County, Georgia (R. 2); that defendant has no witness residing outside of Ben Hill County, Georgia (R. 2); that if the action is tried at Birmingham, Alabama, it will be necessary for plaintiff to transport not less than six witnesses a distance of 313 miles or more and maintain them there at large expense (R. 3); that at a trial in Birmingham, Alabama, plaintiff could not compel the attendance of witnesses, whereas, it could do so were trial in Georgia (R. 3); that trial in Birmingham, Alabama, would require the absence of essential employees of plaintiff which would seriously interrupt the operation of plaintiff's railroad, whereas, trial in Georgia would entail their absence

from duty for only a short time (R. 3); that trial at Birmingham, Alabama would unreasonably and inequitably burden and harass plaintiff and subject it to unnecessary and unreasonable inconvenience and expense and burden interstate commerce, impede the national defense effort (R. 4) and would needlessly, vexatiously and irreparably damage plaintiff (R. 4); that defendant sued plaintiff at Birmingham for the purpose of vexatiously harassing plaintiff and subjecting it to unreasonable inconvenience and expense (R. 4); that the dockets in Ben Hill County, Georgia are uncongested and to allow the action to proceed in Alabama would impose expense and undue burden upon the citizens and courts of that state in a matter in which they have no interest (R. 4, 5); that defendant was advised to retain counsel in Alabama by his Brotherhood representatives (R. 5); that during the past twenty-four months defendant's counsel in Alabama filed ten suits against plaintiff under the Federal Employers' Liability Act, in all except one of which suits the plaintiff was a non-resident of Alabama and the cause of action occurred outside of Alabama (R. 5); that defendant's acts are contrary to equity and good conscience and plaintiff has no adequate remedy at law (R. 6). The petition prayed for filing and process, for appointment of a guardian ad litem for defendant (a minor), for temporary restraining order and, upon trial, a permanent injunction restraining and enjoining defendant from prosecuting his actions against plaintiff in Jefferson County, Alabama, for rule nisi, and other relief as may be equitable and just (R. 6, 7).

Rule nisi was issued.

Defendant filed a general demurrer to the petition (R. 10).

Upon hearing the trial judge sustained the general demurrer but granted supersedeas and enjoined defendant from further proceeding or prosecuting the Alabama action until such time as final judgment should be rendered by the

Supreme Court of Georgia and its remittitur received by the trial court (R. 11).

On appeal the Supreme Court of Georgia held the petition good against general demurrer and reversed it (R. 12). Judgment was so rendered (R. 22).

Motion by defendant for rehearing was made (R.) and denied (R. 23).

Petition by defendant for stay of remittitur to permit this Petition was filed and order entered granting such stay.

IV. Specification of Errors

We respectfully submit that the Supreme Court of Georgia was in error:

(a) In reversing the judgment of the Superior Court sustaining the general demurrer.

(b) In holding that the petition in the Superior Court set forth a cause of action.

(c) In holding that a Court of the State of Georgia may enjoin a Georgia citizen from prosecuting an action under the Federal Employers' Liability Act in the court of another state.

(d) In holding that the decisions of this Court in *Baltimore & Ohio Railroad Co.* v. *Kepner*, 314 U. S. 44, 62, S. Ct. 6, 86 L. Ed. 28 and in *Miles* v. *Illinois Central Railroad Co.*, 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129 were nullified by the enactment of section 1404(a) of the Judicial Code as applied in *Ex parte Collett*, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207.

(e) In refusing to follow the decision of this court in *Boyd* v. *Grand Trunk Western Railroad Co.*, 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55.

(f) In holding that the decisions of this Court in *Baltimore & Ohio Railroad Co.* v. *Kepner, supra*, and *Miles* v. *Illinois Central Railroad Co.*, were overruled by *State of Missouri ex rel Southern Ry. Co.* v. *Mayfield*, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3.

V. ARGUMENT

A. Introduction and Summary

Have *Baltimore & Ohio Railroad Co.* v. *Kepner*, 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28 and *Miles* v. *Illinois Central Railroad Co.*, 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129 been transcended and overruled by the enactment of 28 U.S.C.A. Sec. 1404(a) and the decisions in *Ex Parte Collett*, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207 and *State of Missouri ex rel Southern Railway Co.* v. *Mayfield*, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 31?

The Supreme Court of Georgia, in deciding this case, so held.

The Supreme Court of Florida in *Atlantic Coast Line Railroad Co.* v. *Wood*, — Fla. —, 58 So. (2d) 549 (April 4, 1952) held to the contrary. That, we submit, is the correct view.

And while it is not possible to reconcile the decisions of those two Courts, we believe that it is possible to reconcile the decisions (but not all of the opinions) of this Court if, and only if, it is recognized that the doctrine of forum non conveniens is a principal separate and apart from the injunction to restrain an inequitable suit in a foreign court, and that Section 1404(a) is a forum non-conveniens statute applicable only in Federal Courts.

B. The Statutes Involved

Two Federal statutes are involved: Section 6 of the Federal Employers' Liability Act, 45 U.S.C.A. Sec. 56 reads as follows:

> "No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.
>
> "Under this chapter an action may be brought in a district court of the United States, in the district of the

join Kepner, its employee, from prosecuting a suit in the United States District Court for the Eastern District of New York under the Federal Employers' Liability Act. Kepner was a resident of Ohio and the injury occurred in Ohio.

The petition, to a great extent, set forth facts similar to those alleged by the Respondent in its petition in the Ben Hill County Superior Court; suitable courts open to the employee where he resided and where the injury occurred, suit by the employee in a court distant from his residence and from the place of the accident, expense, undue burden on interstate commerce, and unreasonable, improper and inequitable burden on the railroad.

Holding against the railroad company this Court, in a 6-3 decision said, after citing and discussing the history of Sec. 6 of the Liability Act, supra:

> "The privilege (to sue the carrier wherever it is doing business) was granted because the general venue provisions worked injustice to employees. It is obvious that no state statute could vary the venue and we think equally true that no state court may interfere with the privilege for the benefit of the carrier or the national transportation system, on the ground of inequity based on cost, inconvenience or harassment. When the section was enacted it filled the entire field of venue in federal courts. A privilege granted by the legislative body which created this right of action cannot be frustrated for reasons of convenience or expense. . . . Whatever burden there is here upon the railroad because of inconvenience or cost does not outweigh the plain grant of privilege for suit in New York." (Parenthetical language supplied.)

Miles v. *Illinois Cent. R. Co., supra,* was founded on substantially identical facts to those in Kepner's case except that the suit sought to be enjoined was pending in a distant state court.

Reversing the judgment below granting the injunction the court said:

> "Since the existence of the case of action and the privilege of vindicating rights under the F.E.L.A. in state courts spring from federal law, the right to sue in state courts of proper venue where their jurisdiction is adequate is of the same quality as the right to sue in federal courts. It is no more subject to interference by state action than was the federal venue in the Kepner case. . . .
>
> "If suits in federal district courts at those points (Where the carrier is doing business) do not unduly burden interstate commerce, suits in similarly located state courts cannot be burdensome. As Congress has permitted both the state and federal suits, its determination that the carriers must bear the incidental burden is a determination that the state courts may not treat the normal expense and inconvenience of trial in permitted places, such as the one selected here, as inequitable and unconscionable." (Parenthetical language supplied.)

Thereafter, in 1948, Congress revised and codified the Judicial Code and in so doing enacted Section 1404(a), *supra*.

The impact of that enactment upon Section 6 of the Liability Act was first considered by this Court in *Ex Parte Collett, supra*. There suit was brought under the Act in a United States District Court in Illinois. The railroad filed a motion under 1404(a) to transfer the case to a United States Court in Kentucky and, on a finding of facts which brought the case within the code section, the court below granted the motion. Collett then came to this court with petitions for writs of mandamus and prohibition and rules nisi therein. Thus, the span of that case was entirely in the federal area.

Denying the relief sought by the Petitioner, this Court held that the sweep of the phrase "any civil action" contained in Section 1404(a) was broad enough to include Federal Employers' Liability Act cases. It pointed to the *Kepner* and *Miles* decisions in saying that prior to the revision of Title 28 of the United States Code, *forum non conveniens* was not available in such cases and said:

> "Section 6 of the Liability Act defines the proper forum; Sec. 1404(a) of the Code deals with the right to transfer an action properly brought. The two sections deal with two separate and distinct problems. Section 1404(a) does not limit or otherwise modify any right granted in Section 6 of the Liability Act or elsewhere to bring suit in a particular district. Any action may still be brought in any court, state or federal, in which it might have been brought previously.
>
> "The Code, therefore, does not repeal Section 6 of the Federal Employers' Liability Act. We agree with Petitioner that Congress had no such intention, as demonstrated by its failure to list the section in the meticulously prepared schedule of statutes repealed.".

There next came to this Court the case of *Boyd* v. *Grand Trunk Western Railroad Co., supra.* Boyd had sued the railroad under the F. E. L. A. in the state court of Illinois and the railroad sought an injunction in the state court in Michigan against prosecution of the Illinois action.

Contrary to the comment on that case by the Supreme Court of Georgia in the opinion below in the case at bar, virtually all of the bases for the injunction were pleaded in the Michigan suit that are pleaded in the petition by the railroad in this case, —— Mich. ——, 33 N. W. (2d) 120 at 122, and, in addition there was an agreement by Boyd in consideration of advances to him by the railroad to sue only in Michigan.

By striking down the agreement (which this Court did) that case is absolutely parallel to the case at bar, both on its facts and in its procedural course through the Courts and it was decided subsequent to the enactment of Section 1404(a).

Thus the stage was set for this Court to bring into play Section 1404(a) in state court F. E. L. A. cases had it seen fit to do so. But it did not. It held that the agreement to sue only in Michigan was in contravention of Sec. 5 of the Liability Act (45 U. S. C. A. Sec. 55) and said:

> "And nothing in Ex Parte Collett, 1949, 337 U. S. 55, 69 S. Ct. 944, affects the initial choice of venue afforded Liability Act plaintiffs. We stated expressly that the section of the Judicial Code there involved, 28 U. S. C. Sec. 1404(a), 28 U. S. C. A. Sec. 1404(a), 'does not limit or otherwise modify any right granted in Section 6 of the Liability Act or elsewhere to bring suit in a particular district. An action may still be brought in any court, state or federal, in which it might have been brought previously.' 337 U. S. at page 60, 69 S. Ct. at page 947."

Finally came *State of Missouri ex rel Southern Ry. Co.* v. *Mayfield, supra* (two cases), in which actions were brought under the F. E. L. A. in state trial courts and the railroads' motions to dismiss on *forum non conveniens* grounds were denied, whereupon the railroads filed original proceedings in mandamus in the Supreme Court of Missouri to compel the trial judges to exercise their discretion on the motions.

In the view of a majority of this Court the Supreme Court of Missouri was impelled to decide against the railroads because of the thrust of the *Kepner* and *Miles* decisions. Holding that each state is free to decide for itself the applicability, in its courts, of the principle of *forum non conveniens*, the Court vacated and remanded for further proceedings in the Supreme Court of Missouri.

As we interpret the majority opinion it says, in effect, that Section 1404(a) had no place in the consideration of the question before the Court:

> "There was nothing in that Act (the Liability Act) even prior to Section 1404(a) of the 1948 revision of the Judicial Code, 28 U. S. C., 28 U. S. C. A. which purported 'to force a duty' upon the state courts to entertain or retain Federal Employers' Liability litigation 'against an otherwise valid excuse.' *Douglas* v. *New York, New Haven R. Co., supra*, 279 U. S. at page 388, 48 S. Ct. at page 356, 73 L. Ed. 747."

On remand the Supreme Court of Missouri held that since it was the policy of the state to permit citizens of Missouri to maintain suits in its courts under the Liability Act it could not bar citizens of other states from doing likewise, —— Mo. ——, 240 S. W. (2d) 106, and this Court denied certiorari to review that decision, 342 U. S. 871, 72 S. Ct. 107, 96 L. Ed. 51.

Before getting into the language of the opinions which recognize the distinction between the injunction suit and the doctrine of *forum non conveniens* we should like to quote the definition of the latter as expressed in *Gulf Oil Corp.* v. *Gilbert*, 1947, 330 U. S. 501, 67 S. Ct. 839, 91 L. Ed. 1055:

> "The principle of *forum non conveniens* is simply that a court may resist imposition upon its jurisdiction, even when jurisdiction is authorized by the letter of a general venue statute."

This must mean that the only court in which *forum non conveniens* has a place is in the court in which the suit is initially brought—in this case, the court in Alabama—and that the doctrine is not applicable by the indirect route of injunction. It is especially important here because Alabama would not recognize the doctrine were it pleaded in *Pope's* case there. *Ex parte State ex rel. Southern Ry.*

Co., —— Ala. ——, 47 So. (2d) 249, *Ex parte, State ex rel. Atlantic Coast Line R. Co.*, —— Ala. ——, 47 So. (2d) 251.

This Court has drawn the line between injunction and and *forum non conveniens* on several occasions.

In the *Miles* case, 315 U. S. at page 704, 62 S. Ct. at page 831, 86, L. Ed. at page —, Mr. Justice Reed for the majority said:

> "This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally as was approved in the Douglas or Chambers cases, note 6 supra. We are considering another state's power to so control its own citizens that they cannot exercise the federal privilege of litigating a federal right in the court of another state."

In the same case Mr. Justice Jackson, concurring, expressed the same thought, 315 U. S. at page 708, 62 S. Ct. at page 832, 86 L. Ed. at page ——, in this language.

> "Even if Missouri, by reason of control of its own courts, might refuse to open them to such a case, it does not follow that another state may close Missouri's courts to one with a federal cause of action. If Missouri elects to entertain the case, the courts of no other state can obstruct or prevent its exercise of jurisdiction as conferred by the federal statute or its right to obtain evidence or distribute the proceeds, if any in accordance with the Federal Employers Liability Act."

Mr. Justice Frankfurter said, dissenting in the *Miles* case, apparently with the distinction between injunction and *forum non conveniens* in mind, 315 U. S. at page 710, 62 S. Ct. at page 833, 86 L. Ed.:

> "The Kepner decision cast no cloud upon Douglas *v.* New York, New Haven R. Co., 279 U. S. 377, 49 S. Ct.

355, 73 L. Ed. 747, which sustained the power of a state to apply the principle of forum non conveniens to suits under the Act brought in its courts of non-residents."

As between injunction and *forum non conveniens* the cases align themselves so:

Injunction Cases:

Baltimore & Ohio R. Co. v. *Kepner, supra.*
Miles v. *Illinois Cent. R. Co., supra.*
Boyd v. *Grand Trunk Western R. Co., supra.*

Forum Non Conveniens Cases:

Ex Parte Collett
State ex rel. Southern Railwdy Co. v. *Mayfield.*

Section 1404(a) of the Judicial Code, 28 U. S. C., [illegible] U. S. C. A., is a *forum non conveniens* statute for application only in the Federal Courts. It is so phrased: ". . . a district court may transfer . . . to any other district or division . . .". The variances in pleading and practice between the several states would make it impracticable, if not impossible, for the courts of the state to transfer a case to the courts of another state. And with *Douglas* v. *New York, New Haven R. Co.*, 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, standing unimpaired it was unnecessary for Congress to attempt to authorize State courts to adopt the principle of *forum non conveniens*, even though it had been able to overcome the doubts as to constitutionality expressed by the Attorney General. Note 18 to *Ex Parte Collett*, quoted below.

Yet the burden which Respondent must necessarily shoulder here is that Congress meant vastly more than it said, that it intended to include State Courts as well as Federal Courts in enacting Section 1404(a).

Thus, in the light of the foregoing, we submit that the judgment of the Supreme Court of Georgia is final and is subject to review by this Court.

Respectfully,

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It seems to us that Mr. Chief Justice Vinson denied the validity of Respondent's position here when he said, in *Ex Parte Collett*, 337 U. S. at page 64, 69 S. Ct. at page 949, 93 L. Ed. at page 1213:

> "But the Jennings Bill was far more drastic than Section 1404(a). The Jennings Bill would in large part have repealed Section 6 of the Liability Act. It would have delimited the available forum for actions brought in state as well as federal courts.[18] . . . Inasmuch as none of these changes in the law was contained in the Code. . . ."

Therefore, we submit, Section 6 of the Liability Act, Sec. 1404(a) of the Judicial Code, and all of the decisions can only stand together unimpaired by a recognition of the difference between injunction and *forum non conveniens*. The Supreme Court of Utah, in *Mooney* v. *Denver & R. G. W. R. Co.*, — Utah —, 221 Pac. (2d) 629 at 640, 641, after reviewing the many decisions, both State and Federal, expressed itself on the point in these words:

> "While the United States Supreme Court has held that one state may not enjoin one of its citizens from prosecuting a cause of action under a F. E. L. A. statute in another state or Federal court, there are principles other than forum non conveniens involved in those holdings. There is the problem that Congress has permitted suit in the courts of all states and there may

---

[18] As one of the three grounds of opposition to the Jennings Bill, one minority report stated, "The bill restricts state courts in the administration of justice, deprives them of their prerogatives to require change of venue of lawsuits where necessary, and transcends the provisions of State laws governing the jurisdiction of State courts." H.R. Rep. No. 613, 80th Cong., 1st Sess. 1 (part) 2 (1947).

Doubt was expressed that Congress had constitutional power so to affect state courts. See, e. g. letter of Acting The Assistant to the Attorney General, Hearings before Senate Committee on the Judiciary on S. 1567 and H.R. 1639 (Jennings Bill) 80th Cong., 2nd Sess., 215 (1948).

be some limitation in a state's right to prevent its citizens from taking advantage of rights given by federal statutes when the state entertaining the suit is willing to assume jurisdiction. That question involves principles separate and distinct from the right of a state to attach some conditions to the use of its courts by non-residents.

"In order to reconcile the doctrine announced in the case of Douglas v. New York, N. H. & H. R. Co., supra, with the holdings in the other cases and for us to give full force and effect to the language used in each of the decisions we must necessarily conclude that the United States Supreme Court has held that prior to the enactment of Section 1404(a) the doctrine of forum non conveniens was unavailable in the Federal Court system because of the special venue provisions; that in state courts the doctrine was available in all types of cases; and, that even though available under state procedures the doctrine could not be used by a sister state as the foundation for enjoining a resident from using the courts of another state which was willing to keep its courts open for F. E. L. A. litigants."

Conclusion

At the time Congress enacted section 1404(a) of the Judicial Code each state was free to apply its policy of *forum non conveniens* in Federal Employers' Liability Act cases in its own courts, *Douglas* v. *N. Y. N. H. R. Co., supra*, and no state court could enjoin a citizen of its state from proceeding under the Liability Act in the Federal court of another state, *Baltimore & Ohio R. Co.* v. *Kepner, supra*, or in the state court of another state, *Miles* v. *Illinois, Cent. R. Co., supra*, for reasons of convenience, burden on inter-state commerce, vexatiousness, harassment, etc. *Forum non conveniens* was not available in Federal courts in Federal Employment Liability Act cases. *Ex parte Collett, supa.*

Section 1404(a) of the Code merely empowered Federal District Courts to transfer a case to another District or Division for the convenience of parties and witnesses and in the interest of justice.

Ex parte Collett, supra, held that 1404(a) applies to Federal Employers' Liability Act suits in the Federal courts—nothing more can be drawn from that decison. It was a 1404(a) case in the Federal courts, and had nothing whatever to do with injunction and at no point did it touch a state court.

Boyd's case was an injunction case in the state courts, as is the case here. It was decided subsequent to the enactment of 1404(a), and this court there held that even though the employee had agreed to sue only in Michigan, the Michigan courts could not restrain him from maintaining his suit in Illinois.

The *Mayfield* case was in the state courts on forum non conveniens and merely reiterated the rule of *Douglas* v. *N. Y., N. H. R. Co.* that local law is applicable in such cases.

The *Miles* and *Boyd* cases are directly in point here. *Miles'* case was decided prior to 1404(a); *Boyd's* case was decided subsequent to 1404(a). That code section did not change the law expressed in the *Miles* case, otherwise the result of the *Boyd* case would necessarily have been different.

We submit that the decision of the Supreme Court of Georgia should be reversed. Any other conclusion would permit the courts of one state to apply their policy of *forum non conveniens* in the courts of another state. No opinion of any member of this Court in any case has gone that far. The language which the Supreme Court of Georgia quotes from Mr. Justice Jackson's concurring opinion in *Mayfield* must be read in the context in which it was written—a *forum non conveniens* case in the State Court of Missouri.

Alabama is willing to hear *Pope's* case. It is not for Georgia to say that it shall not do so.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITIONER'S BRIEF IN RESPONSE TO COURT'S ORDER

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

Respondent

PETITIONER'S BRIEF IN RESPONSE TO COURT'S ORDER

This brief is filed pursuant to the order of the Court made and entered on October 27, 1952 (unreported), which is as follows:

> "The petition for writ of certiorari in this case is granted. Counsel are requested to discuss in their briefs and on oral argument the question whether the judgment sought to be reviewed is final within the meaning of 28 U.S.C. Sec. 1257."

For the convenience of the Court we repeat here that portion of Petitioner's main brief (p. 2) which outlines the procedural background of this case:

> "IV. *Summary Statement of Matter Involved.*
>
> "Petitioner, a resident of Ben Hill County, Georgia, sued Respondent in the Circuit Court of Jefferson County, Alabama, under the Federal Employers' Lia-

bility Act for injuries sustained in Ben Hill County, Georgia.

"Approximately five months later Respondent filed suit in Ben Hill County, Georgia, to enjoin Petitioner from further prosecuting the Alabama suit on the grounds of expense, inconvenience, vexatiousness, harassment, burden on interstate commerce, more convenient forum in Georgia, and impeding the operation of Respondent's railroad and the national defense effort.

"Petitioner demurred generally to Respondent's petition and, after hearings, the Judge of Superior Court sustained the demurrer but granted supersedeas and enjoined Petitioner from further proceeding with the Alabama action pending final decision of the case by the Supreme Court of Georgia and receipt of remittitur therefrom.

"On appeal, the Supreme Court of Georgia reversed and Petitioner's motion for rehearing was denied. Petitioner's motion for stay of remittitur was granted to permit this Petition for Certiorari."

The question of finality has been troublesome to lawyers and judges alike. Mr. Justice Frankfurter, speaking for the majority in *Republic Natural Gas Co.* v. *Oklahoma*, 334 U. S. 62, 68 S. Ct. 972, 92 L. Ed. 1212, termed the dividing line between "final judgments and non-final judgments" "faint and faltering at times" and said:

> "No self-enforcing formula defining when a judgment is 'final' can be devised."

But, unlike the judgment before the Court in that case, the judgment of the Supreme Court of Georgia has decided, conclusively for Georgia and for Pope, the only question of law in the case—and that question is a Federal question directly related to Federal statutes and to recent decisions of this Court construing such statutes. Thus, there is no possibility that the "matter left open (proof of the facts alleged in the petition) may generate additional Federal

questions" and violate "the policy against fragmentary review," which seems to be the basis for the majority's view in the *Republic Natural Gas Co.* case, *supra*. A decision by this Court would conclude the entire case once and for all—just as the decision below would have done, failing appeal,—as to the only legal question in the case. To deny review now and send the case back to the trial court for proof of facts which are conceded (and many of which the Court judicially knows) would serve no useful purpose but, rather, would unnecessarily prolong this litigation.

The Federal question is severable from the factual matters in this case, as in *Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120, 65 S. Ct. 1475, 89 L. Ed. 2092, in which the Court expressed an exception to the general requirement of finality:

> "Only in very few situations, where intermediate rulings may carry serious public consequences, has there been a departure from this requirement of finality for Federal appellate jurisdiction."

Serious public consequences might well follow a denial of review of this case. We know of at least three instances in which the question has been before state appellate courts: *A.C.L. R. Co.* v. *Wood*, — Fla. —, 58 So. (2d) 549, *A.C.L. R. Co.* v. *Pope*, — Ga. —, 71 SE (2d) 243, *Mooney* v. *D. & R. G. R. Co.*, — Utah —, 221 Pac. (2d) 629. And no doubt there are numerous others pending in trial courts or, perhaps, undecided on appeal.

Every decision of this Court carries serious public consequences. The Supreme Court of Georgia has held that *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129, is no longer the law of the land. Whether the Georgia decision is right or wrong is a matter of serious concern and consequence, and it is important that it be reviewed.

The language in *Swift & Co. V. Compania Colombiana*, 339 U. S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, quoting from *Cohen* v. *Beneficial Ind. Loan Corp.* 337 U. S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528, is equally applicable to the judgment under consideration here, in that it

> "appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated".

Finally, there is a striking parallel between this case and *Boyd* v. *Grand Trunk Western R. Co.*, 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55, cited and relied upon in our main brief:

Boyd's Case	*Pope's Case*
Nature of Action	
Enjoin defendant from proceeding in Illinois State Court under FELA.	Enjoin defendant from proceeding in Alabama State Court under FELA.
Where Brought	
Michigan State Court.	Georgia State Court.
Proceedings in Trial Court	
Motion to dismiss (equal to general demurrer under Michigan practice) sustained. Temporary injunction dissolved.	General Demurrer sustained. Supersedeas granted and restraining order issued against Pope pending appeal and receipt of remittitur.

Proceedings in State Supreme Court	
Reversed, Temporary injunction reinstated and case remanded for further proceedings.	Reversed. Restraining order continues in effect.
Status of Case upon Entering this Court	
Temporary injunction in effect. State Supreme Court decided points of law against employee.	Restraining Order in effect. State Supreme Court decided points of law against employee.

In the *Boyd* case the Court said:

> "Certiorari was granted, 337 U. S. 923, 93 L. Ed. , 69 S. Ct. 1166 (1949), because the federal and state courts which have considered the issue have reached conflicting results".

The case here presents an issue in which the state courts, which have given it consideration, have reached conflicting results. *A.C.L. R. Co.* v. *Wood,* supra, *A.C.L. R. Co.* v. *Pope,* supra, *Mooney* v. *D. & R. G. R. Co.,* supra. Because of the inherent nature of the issue, only state courts could consider it but, we submit, divergent views of state courts concerning a question arising under a Federal Act should have as strong an appeal to this Court to afford review and decide the issue as did the divergent views of state and federal courts in the *Boyd* case, supra. The reason stated for the grant of certiorari in *Brown* v. *Western Ry. of Ala.,* 338 U. S. 294, 70 S. Ct. 105, 94 L. Ed. 93, was that

> "—the implications of the dismissal were considered important to a correct and uniform application of the Federal Act in the state and federal courts".

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,
Petitioners,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

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ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

I. OPINION IN COURT BELOW.

The opinion of the Supreme Court of Georgia in the case of Atlantic Coast Line Railroad Company v. N. E. Pope, et al., has not yet been reported in the official Georgia Reports, but has been published in 71 S. E. (2d) 243 and is included in the transcript of the Record (R. 12).

II. STATEMENT OF THE CASE.

The statement of the case set out in the brief of petitioners in support of their petition for certiorari is substantially correct, except that it fails to show that the petition filed by respondent in the Superior Court of Ben Hill County, Georgia, alleged that Pope had been a resident

of Ben Hill County, Georgia, continuously for a period of eighteen or more years and that the cause of action upon which Pope filed suit in the Circuit Court of Jefferson County, Alabama, arose in Ben Hill County, Georgia.

III. ARGUMENT.

A. Summary.

The question raised on this petition for certiorari is whether the decision of the Supreme Court of Georgia which is sought to be reviewed has decided a federal question of substance contrary to the decisions of this Court. We submit that there is no conflict and that the petition for certiorari should be denied for the reason that the decision of the Supreme Court of Georgia—

(1) Correctly interprets and construes the effect of Section 1404 (a) of the Judicial Code (28 U.S.C.A. Sec. 1404 (a)) upon Section 6 of the Federal Employers' Liability Act (45 U.S.C.A. Sec. 56); and

(2) Is in accord with and conforms to the prevailing decisions of this Court upon the question involved.

B. Statutes Involved.

The statutes involved are:

(1) Section 6 of the Federal Employers' Liability Act, 45 U.S.C.A. Sec. 56, the pertinent provision of which is:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The

jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, - - - - -"

(2) Section 1404 (a) of the Judicial Code, 28 U.S.C.A. Sec. 1404 (a), which is:

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

C. Decisions of This Court.

The pertinent prevailing decisions of this Court are:

Ex parte Collett, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207. (1949)

State of Missouri ex rel. Southern Railway Company v. Mayfield, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3. (1950)

D. Argument.

1. A STATE COURT HAS INHERENT EQUITY POWER TO RESTRAIN ITS CITIZENS FROM PROSECUTING CAUSES OF ACTION IN OTHER STATES UPON PROPER SHOWING.

Respondent filed its suit in the Superior Court of Ben Hill County, Georgia, to restrain appellants from prosecuting a cause of action filed in the Circuit Court of Jefferson County, Alabama. In its decision, the Supreme Court of Georgia held that the allegations of the petition were sufficient against general demurrers. (R. 13).

The inherent power of courts of equity to enjoin its citizens from prosecuting burdensome and oppressive actions in other jurisdictions has long been recognized and is well established. Appellants do not question this power.

The Supreme Court of Georgia has long recognized this power as shown by the decisions cited in the opinion of the Court below. (R. 13, 14).

While recognizing this inherent power of state courts to grant such equitable relief, this Court in the cases of Baltimore & Ohio Railroad Co., v. Kepner, 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28, 32, (1941) and Miles v. Illinois Central Railroad Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129, 1134, (1942) refused to sanction the granting of such relief in Federal Employers' Liability Act cases, and based its decision solely upon the venue section of the Federal Employers' Liability Act, 45 U.S.C.A. 56 (Section 6 of the Act).

2. BY ENACTING SECTION 1404 (a) OF THE JUDICIAL CODE CONGRESS EXPRESSED ITS INTENTION TO FREE THE COURTS FROM THE RESTRICTIONS IMPOSED BY THE KEPNER AND MILES DECISIONS.

The entire legislative history of Section 1404 (a) of the Judicial Code shows the intention of Congress to remedy the abuses in the choice of forums by plaintiffs who saw fit to bring their suits far from where the cause of action arose and the witnesses resided.

> "Prior to the current revision of Title 28 of the United States Code, *forum non conveniens* was not available in Federal Employers' Liability Act suits. Baltimore & O. R. Co. v. Kepner, 314 U. S. 44, 86 L. Ed. 28, 62 S. Ct. 6, 136 A.L.R. 1222 (1941); Miles v. Illinois C. R. Co., 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, 146 A.L.R. 1104 (1942); ————. The revisor's notes, which accompany each section of the Code, here read as follows: 'Subsection (a) was drafted in accordance with doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see Baltimore & Ohio R. Co. v. Kepner, 1941, 62 S. Ct. 6, 314 U. S. 44, 86 L. Ed. 28, which was prosecuted under the Federal Employers [Sic] Liabil-

ity Act in New York, although the accident occurred and the employee resided in Ohio.'"

Ex parte Collett, 337 U. S. 55, 57, 69 S. Ct. 944, 93 L. Ed. 1207, 1209. (1949)

In the case of Nunn v. Chicago, Milwaukee, St. P. & P. R. Co., 80 F. Supp. 745 (S.D.N.Y. 1948), where the defendant railroad invoked Sec. 1404 (a) and had the case transferred to a more convenient forum, the Court, after discussing the Kepner and Miles cases, stated:

"The foregoing cases are no longer controlling, or even applicable. Not only were they decided prior to the enactment of the new Judicial Code, when there was no provision of statute similar to 1404 (a), but the legislative history of Section 1404 (a) makes it abundantly clear that it was the very purpose of Congress, in enacting that section, to change the rule which had been approved by the decisions in those cases - - - a course indicated by the statement of the Supreme Court in the Kepner case, supra, page 54 of 314 U. S., page 10 of 62 S. Ct., that if the rule 'is deemed unjust, the remedy is legislative.'"

Nunn v. Chicago, etc., R. Co. supra, p. 747.

The appellants point with pride to this Court's statement in Ex parte Collett (Appellants' Brief, p. 13) that Section 6 of the Liability Act and Section 1404 (a) deal with two separate and distinct problems. We agree. Section 6 defines venue. Section 1404 (a) deals with the right to transfer an action properly brought. Injunction affords relief when suits become oppressive and inequitable because brought in distant courts. The use of injunctive relief is as separate and distinct from Section 6 as is Section 1404 (a).

We admit that Pope had the right to bring his suit in the Circuit Court of Jefferson County, Alabama, but we

say that Pope can be brought home when it is shown that he is acting unfairly, oppressively and unjustly.

Section 6 defines the proper forums in which injured employees can bring their suits. When it enacted Section 1404 (a), Congress made it clear that Section 6 does nothing more. Section 6 of the Federal Employers' Liability Act does not now prohibit the use of injunctive relief in proper cases.

This was further clarified by the case of Missouri v. Mayfield (U. S. 1950) 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3, in which this Court held that a State Court is not compelled to reject the doctrine of forum non conveniens by any provisions of the Federal law. In so holding the Court stated:

> "Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of Federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be freed to decide the availability of the principle of forum non conveniens in these suits according to its own local law."
>
> Missouri v. Mayfield, 340 U. S. 1, 5; 71 S. Ct. 1, 95 L. Ed. 3, 8. (1950)

In a concurring opinion Mr. Justice Jackson stated:

> "The Missouri Court appears to have acted under the supposed compulsion of Miles vs. Illinois Cent. R. Co., 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, 146 A.L.R. 1104, among other of this Court's decisions. The deciding vote in that case rested, in turn, only on what seemed to be compulsion of statutory provisions as to venue. *By amendment, 28 USC Section 1404 (a),* as interpreted in Ex parte Collett, 337 US 55, 93 L. Ed. 1207, 69 S. Ct. 944, 959, 10 ALR 2d 921, *Congress has removed the compulsion which determined the Miles Case,* and the Missouri Court should no longer regard it as controlling." (Emphasis supplied.)
>
> Missouri v. Mayfield, supra.

Section 1404 (a) provides a remedy in cases filed in the Federal courts. It removed the compulsion that was thought to exist when the Miles case was decided. The State courts are now free to apply the proper remedy under their procedure and statutes. In Georgia injunction is the remedy.

3. INJUNCTIVE RELIEF AND DOCTRINE OF FORUM NON CONVENIENS ARE MERELY TWO METHODS OF ATTAINING THE SAME RESULT.

Both injunctive relief and the doctrine of forum non conveniens have been applied many times to give relief to defendants who are sued in courts far distant from the scene of the accident and place of residence of the parties and witnesses, and which result in unnecessary expense and inconvenience. Both principles are applied to the same factual circumstances. The doctrine of forum non conveniens is applied in the court in which the plaintiff's case is pending. Injunctive relief is given by the courts of the plaintiff's residence. Both act in personam.

This Court has made no distinction between the principles underlying the doctrine of injunctive relief and forum non conveniens.

> "It is true that in cases under the Federal Employers' Liability Act we have held that the plaintiff's choice of a forum cannot be defeated on the basis of forum non conveniens. But this was because the special venue act under which those cases are brought was believed to require it. Baltimore & O. R. Co. v. Kepner, 314 U. S. 44, 86 L. Ed. 28, 62 S. Ct. 6, 136 A.L.R. 1222; Miles v. Illinois C. R. Co., 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, 146 A.L.R. 1104."
>
> Gulf Oil Corp. v. Gilbert, 330 U. S. 501, 505, 91 L. Ed. 1055, 1061, 67 S. Ct. 839. (1947)

It will be noted that the Kepner and Miles cases which involved *injunctive* relief are cited in support of the propo-

sition that plaintiff's choice of a proper forum cannot be defeated on the basis of *forum non conveniens*.

This Court held in the Collett and Mayfield cases in allowing relief under the doctrine of *forum non conveniens* that the Miles and Kepner cases which involved *injunctive* relief were *no longer* binding as precedents because of the enactment of Section 1404 (a) and not because there was any distinction between the principles of forum non conveniens and injunctive relief. This is clearly shown in the concurring opinion of Mr. Justice Jackson in the Mayfield case which we cited above (p. 6) and in which he states that when Congress enacted the *forum non conveniens* statute it removed the compulsion under which the Supreme Court suffered in refusing to allow an *injunction* in the Miles case. In other words the venue provision of the Federal Employers' Liability Act no longer prohibits invoking the doctrine of forum non conveniens and should no longer affect the use of injunctions in proper cases.

Congress has acted and defendants are protected in Federal Courts against burdensome and oppressive suits of the type now before this Court. As appellants point out (Brief p. 15) the Alabama Courts reject all pleas of forum non conveniens. They do so because of an unusual statutory provision. In discussing this the Supreme Court of Alabama said: "Why the Legislature desired to burden the courts of this state with settling controversies between outsiders and which arose in other states is difficult to appreciate." Ex parte state ex rel. Southern Ry. Co., —— Ala. ——, 47 So. (2d) 249, 251. Since the Courts of Alabama cannot apply the doctrine of forum non conveniens, Respondent had no alternative but to seek the aid of Georgia Courts in preventing a Georgia resident and citizen from doing injustice and acting inequitably. If Georgia Courts cannot use injunctive relief in proper cases, the will of Congress when it enacted Section 1404 (a) is thwarted.

The Appellants' argument (Brief p. 19) that each state is free to apply its policy of forum non conveniens in Federal Employers' Liability Act cases under the doctrine of Douglas v. N. Y. N. H. R. Co., 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, (1929) applies with equal force to our contention that Georgia Courts are free to apply its policy as to injunctive relief in proper cases.

Appellants argue that the Georgia Courts are seeking to apply its policy of forum non conveniens in the courts of Alabama. (Brief p. 20.) Respondent is not attempting in any way to enforce a policy upon the courts of Alabama. It is merely seeking equitable relief against a citizen of Georgia over whom the Superior Court of Ben Hill County has personal jurisdiction. The methods of procedure differ. The ultimate result is the same.

The Congress has full authority to enact laws regulating the procedure of the Federal Courts. It has no power to regulate the procedure of the courts of the several States. When Congress enacted Section 1404 (a) of the Judicial Code, it made forum non conveniens an established mode of procedure in the Federal Courts. The intent of Congress, as recognized by this Court, made this doctrine applicable to Federal Employers' Liability Act cases. Under it a Federal District Court of California, Alabama or any other State can transfer a case for proper cause to any other District Court in which it might have originally been brought.

The Congress exercised the full limit of its authority in making forum non conveniens applicable in the Federal Courts. It had no authority to regulate procedure of State Courts. If forum non conveniens is invoked in a State court in an applicable case, such court can merely dismiss the cause of action and has no authority or power to transfer the case to the courts of another State. The Circuit Court of Jefferson County, Alabama, is barred from grant-

ing a motion to dismiss on the ground of forum non conveniens. Respondent's suit in the Superior Court of Ben Hill County, Georgia, seeking injunctive relief against Pope, will attain the same result as a motion based upon forum non conveniens had Pope seen fit to file his original suit in the Federal Court of Alabama.

Injunction is the only relief available to respondent. It would be farcical to say that Respondent would be entitled to relief if Pope had filed his action in the Federal Court but cannot secure such relief because the suit was filed in the State Court of Alabama.

4. THE CASE OF BOYD VS. GRAND TRUNK WESTERN RAILROAD IS CLEARLY DISTINGUISHABLE FROM AND IN NO WAY APPLICABLE TO THE CASE NOW UNDER CONSIDERATION.

Counsel for Appellants lay great stress upon the case of Boyd v. Grand Trunk Western Railroad Company, 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55, (1949) and urge it as authority to substantiate their position. We submit that this case involved an entirely different state of facts and determined an entirely different question which is not involved in the case now sought to be reviewed.

The only question before this Court in the Boyd case was the validity of a contract signed by an injured employee after the accident and in which he agreed to file suit only in either the state or district court where the accident occurred or where he resided at the time he sustained his injuries. This Court so stated in the first sentence of its opinion in that case:

In the Boyd case, supra, the Circuit Court of Michigan held that the contract restricting the choice of venue was void. The Supreme Court of Michigan reversed the case holding that the contract was good since it was executed after the injury was sustained. This Court reversed the

case on the sole ground that the contract restricting choice of venue was directly in conflict with Section 5 of the Federal Employers' Liability Act (45 U.S.C.A., Sec. 55) and for that reason was void. No question of injunction or of equitable relief was involved in the Boyd case and no such questions were considered or passed upon by this Court in that decision.

For these reasons, we submit that the Boyd case, supra, is not applicable to and in no way controls the issues here involved.

E. CONCLUSION.

The decision of the Supreme Court of Georgia which is sought to be reviewed correctly interprets and construes the effect of Section 1404 (a) of the Judicial Code upon Section 6 of the Federal Employers' Liability Act as laid down in the prevailing decisions of this Court.

While an injured employee is not restricted in his choice of venue, the doctrine of forum non conveniens can be invoked in Federal Courts where his choice works an undue hardship and inconvenience and is not in the interest of justice. This is the prevailing view of this Court. It was so decided in the Collett case, supra.

In the Mayfield case, supra, this Court held that there was no longer any compulsion resting upon the State courts under the venue provision of the Federal Employers' Liability Act and ruled that the State Courts were free to apply their own doctrines. This is exactly what the Supreme Court of Georgia has done in the case now sought to be reviewed.

The doctrines promulgated by this Court in the Miles and Kepner cases, supra, were enunciated prior to the enactment of Section 1404 (a) of the Judicial Code and were based solely upon the supposed force of Section 6 of the

Federal Employers' Liability Act. These decisions have been abrogated and are no longer of force since the enactment of Section 1404 (a) of the Judicial Code. The principles adopted by this Court in the Collett and Mayfield cases, supra, are now of force.

The decision of the Supreme Court of Georgia recognizes the doctrines of these prevailing cases and is in full accord with the rulings of this Court upon the federal question involved. It conforms to those rulings and there is no conflict between the decisions of this Court and that of the supreme Court of Georgia upon those questions.

For these reasons, we respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

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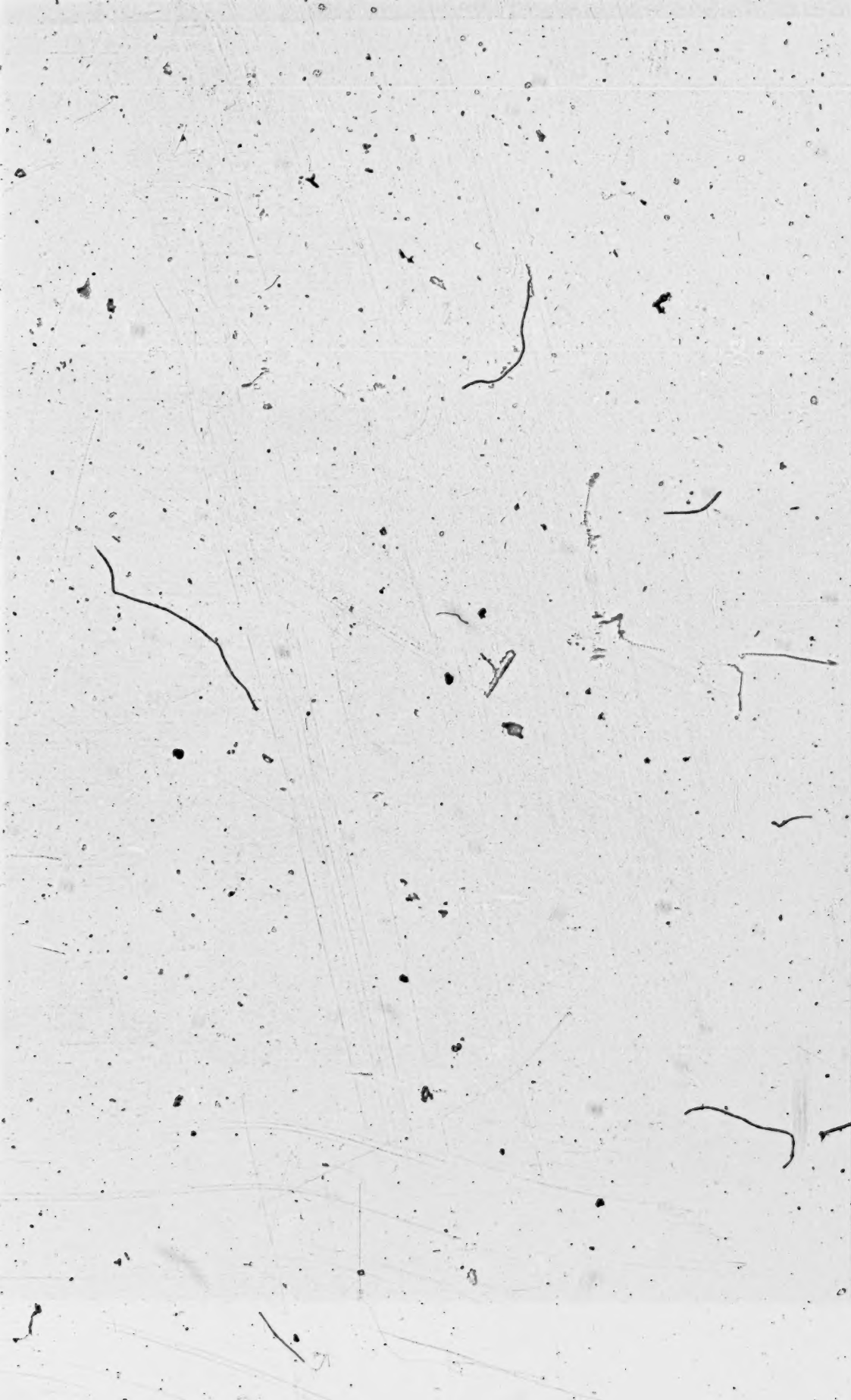

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, *et al.*,
Petitioners,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,
Respondent.

BRIEF OF RESPONDENT ON THE MERITS OF THE CASE

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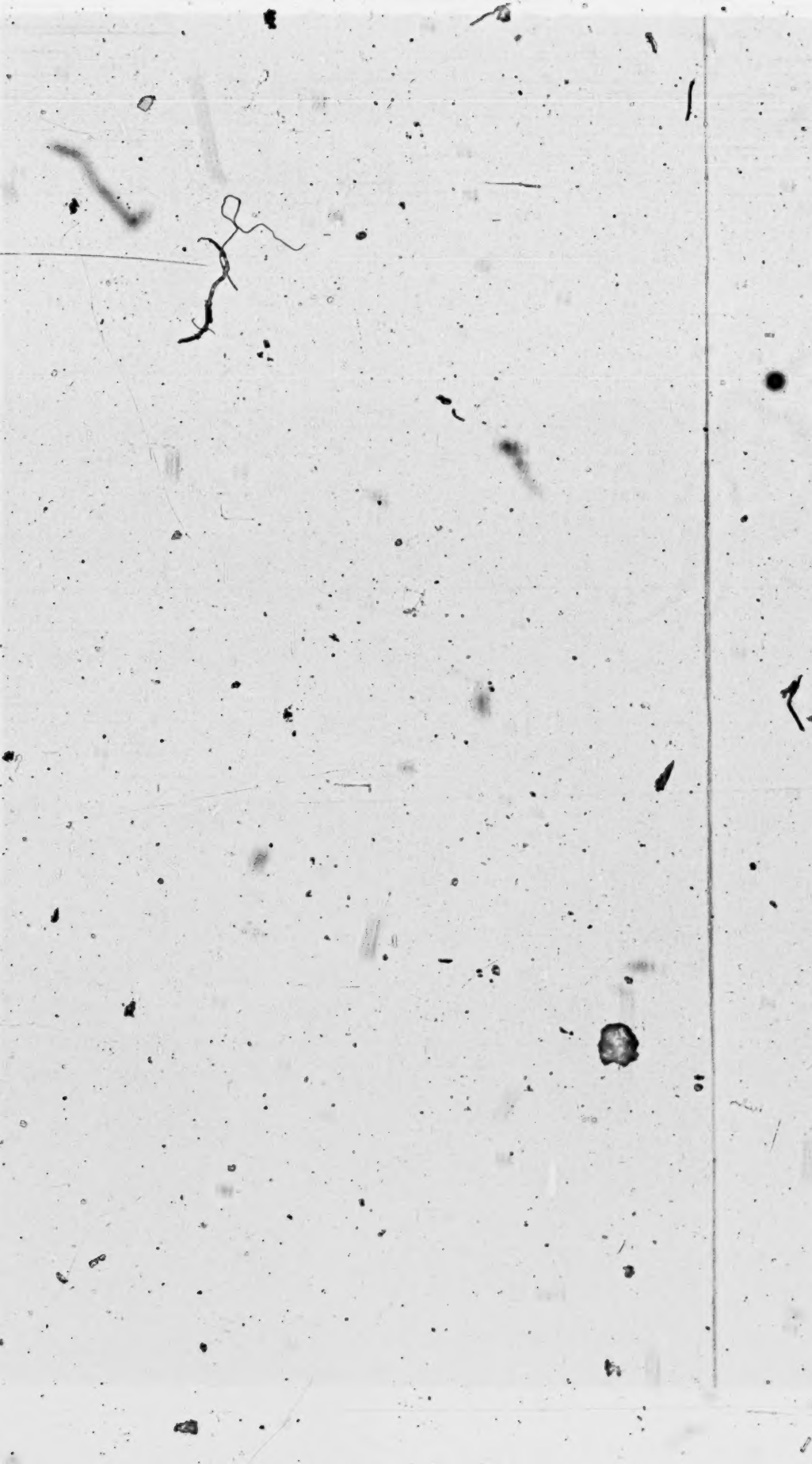

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, *et al.*,

Petitioners,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent.

BRIEF OF RESPONDENT ON THE MERITS OF THE CASE

I. OPINION IN COURT BELOW.

The opinion of the Supreme Court of Georgia in the case of Atlantic Coast Line Railroad Company v. N. E. Pope, et al., has not yet been reported in the official Georgia Reports, but has been published in 71 S. E. (2d) 243 and is included in the Transcript of the Record. (R. 12).

II. STATEMENT OF THE CASE.

On December 12th, 1951, the Atlantic Coast Line Railroad Company filed suit in the Superior Court of Ben Hill County, Georgia, against N. E. Pope, a minor, seeking to enjoin Pope from further prosecution of an action filed by him in the Circuit Court of Jefferson County, Alabama (R. 1).

The petition alleged that the Atlantic Coast Line Railroad Company was a corporation of the State of Virginia, doing business in Ben Hill County, Georgia, was a common carrier engaged in interstate commerce in various states, including Georgia and Alabama (R. 1); that Pope was, and had been continuously for a period of more than 18 years, a citizen and resident of Ben Hill County, Georgia (R. 1, 2); that on or about August 20th, 1951, Pope filed in the Circuit Court of Jefferson County, Alabama, a suit against the Railroad under the Federal Employers' Liability Act seeking to recover damages for personal injuries alleged to have been sustained while engaged in the employ of the Railroad in Ben Hill County, Georgia (R. 1, 2). The petition further alleged that Pope had a wide choice of convenient courts, both State and Federal, within the State of Georgia in which to institute his action (R. 2); that all of the witnesses for both Pope and the Railroad reside chiefly in Ben Hill County, Georgia (R. 2); that, if the case is tried in Alabama, the Railroad will be compelled to transport six or more witnesses a distance of 313 miles at heavy expense and inconvenience (R. 3); that the Railroad cannot compel its witnesses to attend court in Alabama, that their voluntary attendance is doubtful and that they can be compelled to attend a trial in the courts of Georgia (R. 3); that the Railroad's witnesses are essential employees whose prolonged absence in attending court in Alabama will greatly impede the efficient operation of the

Railroad and that a trial in a convenient Georgia court will require their absence for only a short time (R. 3); that the trial of the case in Alabama will improperly, unreasonably and inequitably burden and harass the Railroad and subject it to unnecessary and unreasonable inconvenience and expense and will operate as a burden upon interstate commerce and impede the national defense effort (R. 4); that Pope brought his suit in Alabama for the purpose of vexatiously and needlessly harassing and annoying the Railroad and subjecting it to unnecessary and unreasonable inconvenience and expense and without corresponding benefit to himself (R. 4); that the dockets of the courts in Georgia available to Pope are in such condition as to permit a fair, speedy and impartial trial of the action and that the trial of the case in Alabama will impose an unnecessary and oppressive burden upon the Alabama court in the trial of a cause originating in Georgia and between parties who are non-residents of Alabama (R. 4, 5). The petition further alleged upon information and belief that Pope did not freely select his Alabama counsel but was advised so to do by the representatives of his Brotherhood who assumed full charge of the action and were the motivating force in the selection of the Alabama counsel (R. 5); that Pope's Alabama counsel are not in most instances directly employed by the client they purport to represent but are employed by reference of the case to them by the Railroad Brotherhoods (R. 5); and that within the preceding twenty-four months Pope's Alabama counsel have filed ten suits against the Atlantic Coast Line Railroad Company upon causes of action arising under the Federal Employers' Liability Act (45 U. S. Code, 51 et seq.) and that the plaintiffs in all except one of such suits were non-residents of Alabama and all except one of said actions arose outside of Alabama (R. 5, 6). The petition further alleged that Pope's acts are contrary to equity and good

conscience and that the Railroad is without an adequate remedy except in a court of equity (R. 6).

The prayers of the petition sought a rule nisi setting an interlocutory hearing, asked for the granting of an interlocutory injunction and sought a permanent injunction restraining Pope from further prosecution of his Alabama case, and for such further relief as may be equitable and just (R. 6, 7).

General demurrers were filed by Pope to the Railroad's petition and the trial court passed an order sustaining the general demurrers and dismissing the petition (R. 10, 11, 12).

Upon writ of error, the Supreme Court of Georgia held that the allegations of the petition set out a cause of action and reversed the decision of the trial court (R. 12, through 22).

Pope filed a motion for re-hearing which was denied (R. 23) and brought his petition for certiorari to this court.

III. ARGUMENT.

A. SUMMARY.

This case is now before the Court upon the grant of a petition for certiorari seeking to review a decision of the Supreme Court of Georgia.

The case had its inception upon the filing in the trial court of a petition by respondent seeking to invoke the inherent equity powers of the Georgia courts to restrain petitioners from further prosecution in the Circuit Court

of Jefferson County, Alabama, of a cause of action under the Federal Employers' Liability Act and which arose in Ben Hill County, Georgia. This petition was based upon a number of grounds which are fully set out in the petition itself and are summaried in the statement of the case set out in Part II hereof.

While fully recognizing that the cases of *Baltimore and Ohio Railway Co. v. Kepner,* (1941) 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28 and *Miles v. Illinois Central Railroad Co.,* (1942) 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129 denied such injunctive relief in cases arising under the Federal Employers' Liability Act, respondent contends that the power to grant such relief had long been inherent in courts of equity, continued to exist in other proper cases and is now applicable in cases arising under the Federal Employers' Liability Act. The Miles and Kepner cases were predicated solely upon the venue provisions of the Federal Employers' Liability Act. When Congress enacted Section 1404 (a) of the Judicial Code, it removed the compulsion which was thought to have arisen under the venue provisions. It is the contention of respondent that the Kepner and Miles cases are no longer binding as precedents since the enactment of Section 1404 (a) of the Judicial Code, 28 U. S. C. A. Section 1404 (a), and the decisions of this court in the cases of Ex parte Collett, (1949) 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207 and State of Missouri ex rel., *Southern Railway Co. v. Mayfield,* (1950) 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3, and that the equity courts of the various states now have the inherent power to grant the injunctive relief sought by respondent. The decision sought to be reviewed so held.

By its enactment of Section 1404 (a) Congress clearly provided a remedy to prevent abuse in the selection of a forum in cases arising under the Federal Employers' Lia-

bility Act so far as federal courts are concerned. Throughout the course of this litigation the sole question has been whether state courts are powerless to act or have the inherent right to prevent similar abuse when such cases are filed in the courts of a foreign state rather than in the federal courts in such foreign state.

B. STATUTES INVOLVED.

The statutes involved are:

(1) Section 1257 of the Judicial Code, 28 U. S. C. A. Sec. 1257, the pertinent provision of which is:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows: ..... by writ of certiorari....."

(2) Section 6 of the Federal Employers' Liability Act, 45 U. S. C. A. Sec. 56, the pertinent provision of which is:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, ..."

(3) Section 1404 (a) of the Judicial Code, 28 U. S. C. A. Sec. 1404 (a), which is:

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

C. DECISIONS OF THIS COURT.

The pertinent prevailing decisions of this Court are:

Ex parte Collett, (1949) 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207.

State of Missouri ex rel. *Southern Railway Company v. Mayfield,* (1950) 340 U.S. 1, 71 S. Ct. 1, 95 L. Ed. 3.

D. ARGUMENT.

1. IS THE JUDGMENT SOUGHT TO BE REVIEWED A FINAL JUDGMENT WITHIN THE MEANING OF SECTION 1257 OF THE JUDICIAL CODE?

In the order granting the writ of certiorari this Court directed counsel to discuss the question whether the judgment sought to be reviewed is final within the meaning of 28 U. S. C. A. Section 1257.

That section provides that only final judgments rendered by the highest court of a state may be reviewed by this Court. In a long line of decisions this Court has held that in order for a judgment of a state court to be reviewable it must be a final and complete determination of the case and must end the litigation by fully determining the rights of the parties.

Gospel Army v. City of Los Angeles, (1947) 331 U. S. 543, 67 S. Ct. 1428, 91 L. Ed. 1662, at page 1665.

Department of Banking v. Pink, (1942) 317 U. S. 264, 63 S. Ct. 233, 87 L. Ed. 254, at p. 257.

Arnold v. United States for use of W. B. Guimarin & Co., (1923) 263 U. S. 427, 44 S. Ct. 144, 68 L. Ed. 371, at p. 375.

In discussing this question this Court has said that such a judgment "Must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein".

Market Street Railway Co. v. Railroad Commission of California, (1945) 324 U. S. 548, 65 S. Ct. 770, 89 L. Ed. 1171, at p. 1176.

The case now under consideration meets the first of these tests as it is not subject to review by any other state court. The question is whether it meets the second test. The case was before the lower court on exceptions to an order sustaining a general demurrer and dismissing the petition. The Supreme Court of Georgia held that the allegations of the petition were sufficient and reversed the decision of the trial court entirely upon questions of law.

So far as the Georgia law is concerned this decision is final, is binding upon the parties and is not subject to further review by Georgia courts. This is the general rule and is well established in Georgia in a long line of decisions.

Ingram v. Mercer University, (1897) 102 *Ga.* 226 (1), 29 S. E. 273.

City of Atlanta v. First Methodist Church, (1889) 83 *Ga.* 448, 10 S. E. 231.

Georgia Railway and Power Co. v. Town of Decatur, (1922) 153 *Ga.* 329 (1, 2), 111 S. E. 911.

Although the cases above cited involved rulings on the grant or refusal of interlocutory injunctions the principle is applicable where the ruling of the appellate court reversed the order of the trial court sustaining a general demurrer to the plaintiff's petition as was done in the case now under consideration.

Rivers v. Brown, (1945) 200 *Ga.* 49, 36 S. E. 2d 429.

In discussing the binding effect of its former decision in the same case, the Supreme Court of Georgia in both an early and a recent case has said:

> "When a case is brought to this Court a second time, with no new facts to substantially change the view of it taken before, it only remains for this Court to reaffirm its first judgment, by affirming generally the judgment of the court in attempting to enforce it".
>
> *Sanderlin v. Sanderlin,* (1858) 27 *Ga.* 334.
>
> *Rivers v. Brown,* (1945) 200 *Ga.* 49, at p. 52 (and cases cited), 36 S. E. 2d 429.

The first decision becomes the law of the case and is res adjudicata and binding upon the parties upon the subsequent appearances of the case even though the Supreme Court in the interim had changed its rule upon the principle involved.

> *Saulsbury, Respess & Co., v. Iverson,* (1884) 73 *Ga.* 733 (1).

In the Saulsbury case, supra, the Supreme Court of Georgia adhered to its former decision in the same case (*Saulsbury, Respess & Co., v. Iverson,* (1881) 68 *Ga.* 790), even though in the case of *Weems v. Coker,* (1883) 70 *Ga.* 746 (2, 2a) the Court had made a contrary ruling on the principle involved.

The case of *Georgia Railway and Power Co., v. Town of Decatur,* supra, was before this Court on petition for certiorari from the judgment rendered on the final hearing of that case in the Supreme Court of Georgia. The contention was made that the first opinion of the State Supreme Court affirming the interlocutory order of the trial court was a final adjudication from which a writ of error might have been taken. This Court held that the first decision of

the State Supreme Court was not final within the meaning of the statute for the reason that further action was taken in the trial court following the first decision of the appellate court and held that the first decision was reviewable upon the appeal from the final decision of the State Supreme Court.

> *Georgia Railway and Power Co., v. Town of Decatur*, (1923) 262 U. S. 432, 43 S. Ct. 613, 67 L. Ed. 1065, at p. 1073.

It would seem that under a strict application of the rule the case now under consideration should be dismissed.

However, this Court has in several instances relaxed the rule and in a recent case has said: "Increasingly this Court has become less formal in the matter of final judgments. It is no longer the rule that the face of the judgment is determinative of whether it is final. 'Today the test is not whether under local rules of practice the judgment is denominated final — but rather whether the record shows that the order of the Appellate Court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court' ".

> *Gospel Army v. City of Los Angeles*, (1947) 331 U. S. 543, 67 S. Ct. 1428, 91 L. Ed. 1662, at p. 1665.

In the case now before this Court the question of law is controlling. Counsel for both petitioners and respondent have so recognized in their arguments in both the trial court and the state supreme court. In their brief in response to the Court's order, counsel for petitioners admit that the allegations of fact in the original petition for injunction are true. (Petitioners' brief in response to court's order p. 3.)

In a somewhat similar case where the Supreme Court of California had reversed the judgment of the trial court

without direction, this Court held that it had jurisdiction to review the case saying: "Although the Supreme Court reversed the judgment of the trial court without direction, its decision controls the disposition of the case.——*Since the facts have been stipulated* and the Supreme Court of California has passed on the issues which control the litigation, we take it that there is nothing more to be decided. The jurisdictional objection is thus without merit (Emphasis added)."

Richfield Oil Corp. v. State Board of Equalization, (1946) 329 U. S. 69, 67 S. Ct. 156, 91 L. Ed. 80, at pp. 87, 88.

While there was no stipulation of fact in the instant case it is analogous to the case just cited. It is conceded that the allegations of the original petition are true and this admission by counsel for petitioners is tantamount to a solemn admission *in judicio.* On the assumption that this Court granted the writ of certiorari in view of the importance of the federal question involved, it would seem that no useful purpose could be served by dismissal which would involve the necessity of another appeal on identically the same question.

2. UPON PROPER SHOWING A STATE COURT OF EQUITY HAS INHERENT POWER TO ENJOIN A RESIDENT OF ITS STATE FROM PROSECUTING AN INEQUITABLE SUIT IN THE COURTS OF ANOTHER STATE.

In its suit filed in the Superior Court of Ben Hill County, Georgia, respondent sought to restrain Pope, a resident of that county, from prosecuting a cause of action filed in the Circuit Court of Jefferson County, Alabama. The relief sought was based upon the inherent equity power of the trial court to grant such relief in oppressive and in-

equitable cases. The decision now under review clearly holds that the courts of Georgia have such powers.

The grounds upon which the relief was sought are fully set out in the petition. The decision now under review held that the allegations of this petition were sufficient against general demurrer. (R. 22).

In discussing this inherent power it has been said:

> "It is in fact the settled rule, supported by all the authorities, that a court of equity in one state may and, in a proper case, will restrain its own citizens—from prosecuting actions or proceedings in other states or in foreign countries. Such an injunction will be granted in favor of one who shows clearly that it would be inequitable to permit the prosecution of the suit".

28 Am. Jur. 389, Injunctions Sec. 204.

In support of our view that respondents petition alleges "a proper case" for injunctive relief, we invite the Court's attention to 43 C. J. S. p. 499, Injunctions Sec. 49 and cases cited therein.

The power of state courts to grant such injunctive relief has been recognized in the federal courts and in a well considered opinion in 1931 the Circuit Court of Appeals, Seventh Circuit, said:

> "The general right of Indiana citizens to begin actions of this nature (under Federal Employers' Liability Act), wherever service of process on the defendant could be had, *was always potentially qualified by the jurisdiction of equity to restrain the citizen from commencing the action in a foreign jurisdiction where to do so would unreasonably, inequitably, and unfairly harass, oppress, or defraud the defendant.*

"The Federal Employers' Liability Act does not assume to remove this qualification, and in our judgment *does not exempt the citizen from invocation against him of this equitable jurisdiction* under facts which would in general justify its application". (emphasis added)

Ex parte Crandall, (1931) 53 F. (2d) 969, at p. 971.

Certiorari was denied by this Court in *Crandall v. Habbe*, 285 U. S. 540, 52 S. Ct. 312, 76 L. Ed. 933.

The powers of state courts are determined by the laws of the respective states. Under the laws of Georgia its equity courts have the inherent power to restrain its citizens from prosecuting inequitable cases in foreign states.

The statutes of Georgia provide that equity may restrain proceedings in another court by writ of injunction (Code of Georgia of 1933, Sec. 55-101), and that "equity may enjoin the defendant as to transactions beyond the limits of this State". (Code of Georgia of 1933, Sec. 55-112).

The Appellate Courts of Georgia over a long period of years have recognized that the Courts of Georgia possess such power to enjoin.

Amburson Construction Co. v. Northern Contracting Co., (1913) 140 *Ga.* 1 (3), 7, 78 S. E. 340.

Engel v. Scheuerman, (1869) 40 *Ga.* 206.

McDaniel v. Alford, (1918) 148 *Ga.* 609 (1), 97 S. E. 673.

In the case now under review the Supreme Court of Georgia in a well considered discussion of this question held that the Courts of Georgia have the inherent power to enjoin such cases. We respectfully invite this Court's attention to the discussion in that opinion.

This inherent power of state courts to grant such injunctive relief is recognized in the Kepner case, in which this Court said "The real contention of petitioner is that despite the admitted venue respondent is acting in a vexatious and inequitable manner in maintaining the federal suit in a distant jurisdiction when a convenient and suitable forum is at respondent's doorstep. Under such circumstances petitioner asserts power, abstractly speaking, in the high court to prevent a resident under its jurisdiction from doing inequity. *Such power does exist.* (Emphasis added.)

> *Baltimore and Ohio Railroad Co.*, (1941) 314 U. S. 44, at p. 51, 62 S. Ct. 6, 86 L. Ed. 28, at p. 32.

We submit that state courts have the inherent power to grant the injunctive relief sought by respondent in the case now under review.

3. IN DENYING INJUNCTIVE RELIEF THE KEPNER AND MILES CASES WERE BASED SOLELY ON THE VENUE PROVISIONS OF THE FEDERAL EMPLOYERS' LIABILITY ACT.

This Court and other federal courts have recognized the jurisdiction of state courts to grant injunctive relief such as was sought in the case now under review. The decisions in the Kepner and Miles cases recognized the existence of such power but denied the relief in cases arising under the Federal Employers' Liability Act solely because of the venue provisions of that Act. In the Kepner case this Court said;

> "We read the opinion of the Supreme Court of Ohio to express the view that *if it were not for Sec. 6* of the Employers' Liability Act the requested injunction would be granted on the undisputed facts *of the petition*. Section 6 establishes venue for an action in the

federal courts. As such venue is a privilege created by federal statute and claimed by respondent the Supreme Court of Ohio *felt constrained by the Supremacy Clause to treat Section 6 as decisive of the issue.*"

Baltimore and Ohio Railroad Co., v. Kepner, (1941) 314 U. S. 44, 52, 62 S. Ct. 6, 86 L. Ed. 28, 33.

"The real point of controversy here is whether that portion of Section 6 of the Federal Employers' Liability Act which holds litigation in the state court where it is instituted, prevents the court of another state from enjoining citizens, within its jurisdiction, from continued prosecution of the suit on grounds of inequity."

Miles v. Illinois Central Railroad Co., (1942) 315 U. S. 698, 702, 62 S. Ct. 827, 86 L. Ed. 1129, 1133.

4. BY ENACTING SECTION 1404 (a) OF THE JUDICIAL CODE CONGRESS EXPRESSED ITS INTENTION TO FREE THE COURTS FROM THE RESTRICTIONS IMPOSED BY THE KEPNER AND MILES DECISIONS.

Denial of injunctive relief under the decisions in the Miles and Kepner cases was based solely upon the supposed compulsion arising from Section 6 of the Liability Act. While fully recognizing the evils arising from the transportation of vexatious and harassing cases to far distant forums, this Court suggested a remedy when it said in the Miles case that "If it is deemed unjust, the remedy is legislative——."

Congress provided the remedy in federal courts when it enacted Section 1404(a) which applies to all cases, including those arising under the Liability Act. The effect was to free both federal and state courts from the restrictions imposed by the Kepner and Miles cases.

The entire legislative history of Section 1404 (a) of the Judicial Code shows the intent of Congress to remedy the abuses in the choice of forums by plaintiffs who saw fit to bring their suits in courts far from where the cause of action arose and the witnesses resided. This Court has so recognized.

> "Prior to the current revision of Title 28 of the United States Code, *forum non conveniens* was not available in Federal Employers' Liability Act suits. (Citing Kepner and Miles cases)——. The revisor's notes, which accompany each section of the Code, here read as follows: 'Subsection (a) was drafted in accordance with doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see *Baltimore & Ohio R. Co. v. Kepner*, 1941, 62 S. Ct. 6, 314 U. S. 44, 86 L. Ed. 28, which was prosecuted under the Federal Employers [Sic] Liability Act in New York, although the accident occurred and the employee resided in Ohio.' "
>
> Ex parte Collett, (1949) 337 U. S. 55, 57, 69 S. Ct. 944, 93 L. Ed. 1207, 1209.

This Court's discussion of the legislative history of Section 1404 (a) clearly shows that such was the Congressional intent.

In the case of *Nunn v. Chicago, Milwaukee, St. P. & P. R. Co.*, 80 F. Supp. 745 (S. D. N. Y. 1948), where the defendant railroad invoked Sec. 1404 (a) and had the case transferred to a more convenient forum, the Court, after discussing the Kepner and Miles cases, stated:

> "The foregoing cases are no longer controlling, or even applicable. Not only were they decided prior to the enactment of the new Judicial Code, when there was no provision of statute similar to 1404 (a), but *the legislative history of Section 1404 (a) makes it*

abundantly clear that it was the very purpose of Congress, in enacting that section, to change the rule which had been approved by the decisions in those cases—— a course indicated by the statement of the Supreme Court in the Kepner case, supra, page 54 of 314 U. S., page 10 of 62 S. Ct., that if the rule 'is deemed unjust, the remedy is legislative.' " (emphasis ours)

Nunn v. Chicago, etc., R. Co., supra, p. 747.

In their original brief (Petitioners' Brief in Support of ·ition, p. 13), counsel for petitioners discuss this Court's tatement in Ex parte Collett that Section 6 of the Liability ct and Section 1404 (a) deal with two separate and disnct problems. We agree. Section 6 defines venue. Section 04 (a) deals with the right to transfer an action properly rought in a federal court. Injunction affords relief when uits become oppressive and inequitable because brought distant courts. The use of injunctive relief is as seprate and distinct from Section 6 as is Section 1404 (a) nd is as unhampered by Section 6 as is Section 1404 (a).

We do not deny that Pope had the right under Section to bring his suit in the Circuit Court of Jefferson County, labama. We do say that if he had filed his suit in a ederal court in Alabama Section 1404 (a) would have een applicable under the allegations of respondent's petion. We further say that when Pope chose to file his uit in the state court of Alabama, he can be restrained rom further prosecution of that action and brought home o litigate when it is shown that he is acting unfairly, ppressively and unjustly.

Section 6 defines the forums in which injured employees ay bring their actions. It does nothing more. When it nacted Section 1404 (a) Congress made this clear. Section 1404 (a) allows the transfer of such a case from one

federal court to another federal court upon a motion of forum non conveniens. Section 6 no longer has any effect upon such a transfer. Neither does Section 6 now prohibit the use of injunctive relief in proper cases in state courts where the employee elects to file his action in the courts of a foreign state. This was further clarified by this Court in a subsequent case in which it held that a state court is not compelled to reject the doctrine of forum non conveniens by any provision of the Federal law in cases arising under the Liability Act. In so holding this Court stated:

> "Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of Federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be freed to decide the availability of the principle of forum non conveniens in these suits *according to its own local law.*" (Emphasis ours.)
>
> *Missouri v. Mayfield,* (1950) 340 U. S. 1, 5, 71 S. Ct. 1, 95 L. Ed. 3, 8.

In a concurring opinion Mr. Justice Jackson stated:

> "The Missouri Court appears to have acted under the supposed compulsion of *Miles v. Illinois Cent. R. Co.*, 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, 146 A.L.R. 1104, among other of this Court's decisions. The deciding vote in that case rested, in turn, only on what seemed to be compulsion of statutory provisions as to venue. *By amendment, 28 U.S.C.A. Section 1404 (a),* as interpreted in Ex parte Collett, 337 U. S. 55, 93 L. Ed. 1207, 69 S. Ct. 944, 959, 10 A.L.R. 2d 921, *Congress has removed the compulsion which determined the Miles Case,* and the Missouri Court should no longer regard it as controlling. *A federal court in Missouri would now be free to decline to hear this case* and could transfer it to its proper forum. *Certainly a State is under no obligation to provide a court for two nonresident parties to litigate a foreign-born cause of action when the Federal Government which creates*

the cause of action, frees its own courts within that State from mandatory consideration of the same case. Because of what I wrote in the Miles case I add this note, but otherwise concur in the decision and opinion of the Court." (Emphasis supplied.)

Missouri v. Mayfield, (1950) 340 U. S. 1, 5-6, 71 S. Ct. 1, 95 L. Ed. 3, 9.

It is therefore clear that Congress never intended that the venue provisions of the Federal Employers' Liability Act should strip state courts of their injunctive powers. If under Section 1404 (a) a case filed in a federal court can be transferred to a more appropriate forum in the interest of justice and for the convenience of the parties, then by the same token it necessarily follows that state courts have the right to use injunctions in proper cases where demanded by the interests of justice and equity.

State courts of equity, more than any other branch of our judicial system, have been able to *apply* the real ethical concepts of our great system of jurisprudence. Any decision by this court other than the affirmance of the decision in the court below will in the words of Mr. Justice Frankfurter "unjustifiably limit long-settled powers of the state courts and thereby bring into disequilibrium the relationship of federal and state courts. (Kepner case, p. 54 of 314 U. S., p. 34 of 86 L. Ed.)

Section 1404 (a) provides a complete and adequate remedy in cases filed in the federal courts. It removed the compulsion that was thought to exist when the Miles case was decided. As was stated in the Mayfield case, the enactment of Section 1404 (a) has likewise freed the state courts from such compulsion and they are now at liberty to apply their own practice and procedure in affording similar relief. If this compulsion has not been removed from state

courts we will have the anomalous situation of permitting federal courts to grant appropriate relief and yet deny state courts the power to grant such relief in identical circumstances.

We submit that the state courts are now equally free to apply the proper remedy under their own procedure and statutes.

In Georgia injunction is the remedy.

5. INJUNCTION AND FORUM NON CONVENIENS ARE MERELY TWO METHODS OF REACHING THE SAME RESULT AND ARE BASED ON THE SAME PRINCIPLES.

The remedies of injunction and forum non conveniens are separate roads leading to the same destination. Both are aimed at combatting the same evils. Both are based upon the same factual circumstances. They differ only in their place of application.

These remedies have been used many times to grant relief in vexatious and oppressive suits filed by plaintiffs in far distant courts. The doctrine of forum non conveniens is applied in the court where the plaintiff's case is pending. Injunction is granted by the court where the plaintiff resides. Both act in personam.

This Court has made no distinction between the principles underlying these doctrines.

> "It is true that in cases under the Federal Employers' Liability Act we have held that the plaintiff's choice of a forum cannot be defeated on the basis of forum non conveniens. But this was because the special venue act under which those cases are brought was believed to require it. (Citing Kepner and Miles cases.)"

Gulf Oil Corp. v. Gilbert, (1947) 330 U. S. 501, 505, 67 S. Ct. 839, 91 L. Ed. 1055, 1061.

It is significant that the Kepner and Miles cases which involved *injunctive* relief are cited in support of the proposition that plaintiff's choice of a forum cannot be defeated on the basis of *forum non conveniens*.

This Court later held in the Collett and Mayfield cases, in allowing relief under the doctrine of *forum non conveniens*, that the Miles and Kepner cases which involved *injunctive* relief were *no longer* binding as precedents because of the enactment of Section 1404 (a) and not because there was any distinction between the two doctrines. This is clearly shown in the concurring opinion of Mr. Justice Jackson in the Mayfield case which we cited above (p. 16) and in which he states that when Congress enacted the *forum non conveniens* statute it removed the compulsion under which this Court suffered in refusing to allow an *injunction* in the Miles case. In other words, the venue provision of the Federal Employers' Liability Act no longer prohibits invoking the doctrine of forum non conveniens and should no longer defeat the use of injunctions in proper cases.

Since there is no difference between the principles underlying the two doctrines or the facts upon which they are applied (except as to the place of application) and since the ruling of this Court in the Mayfield case holds that a state court may apply the doctrine of forum non conveniens under its applicable laws, it necessarily follows that in a proper case the state courts have the power to invoke injunctive relief. The laws of Georgia sanction its use.

It is significant that the Gulf Oil Corp. case, supra, applied the doctrine of forum non conveniens in federal

courts before the enactment of Section 1404 (a) and it thus appears that the doctrine was then applicable in all cases except those arising under the Federal Employers' Liability Act. This further illustrates that it was the intent of Congress in enacting Section 1404 (a) to remedy the abuses in choice of forums in Liability Act cases.

When Section 1404 (a) was enacted, Congress exercised the limit of its powers and provided a complete and adequate remedy in the federal courts. Defendants are now protected in federal courts against burdensome and oppressive suits like the one now before this Court. Unless the Georgia Courts are allowed to exercise their inherent power to grant injunctive relief, respondent has no protection simply because the case was filed in a state court rather than in a federal court.

Respondent is unable to obtain relief in the courts of Alabama which reject all pleas of forum non conveniens. The Supreme Court of Alabama has so held because of a peculiar statute found only in that state and the State of Missouri.

> Ex parte State ex rel. Southern Railway Co. 47 So. (2d) 249.
>
> Ex parte State ex rel. Atlantic Coast Line Railroad Co. 47 So. (2d) 251.

Since the courts of Alabama cannot apply the doctrine of forum non conveniens respondent had no alternative but to seek injunctive relief in the courts of Georgia. If Georgia courts cannot grant such relief in proper cases the will of Congress when it enacted Section 1404 (a) is thwarted by the mere filing of the suit in a state whose organic law prohibits the application of the doctrine of forum non conveniens.

Petitioners' argument (Brief in support of petition p. 19) that each state is free to apply its policy of forum non conveniens in Federal Employers' Liability Act cases under the doctrine of *Douglas v. N. Y. N. H. R. Co.*, (1929) 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, applies with equal force to our contention that Georgia Courts are free to apply its policy as to injunctive relief in proper cases. Petitioners would limit respondent to a motion of forum non conveniens in the Alabama court, which they recognize as futile. Petitioners entirely disregard the fact that Alabama courts reject the doctrine of forum non conveniens. Their argument seeks to apply a different result in Alabama and Missouri from that in force in other states.

Petitioners argue that the Georgia courts are seeking to apply the policy of forum non conveniens in the courts of Alabama (Brief in Support of Petition p. 20). This is untenable. The Georgia Court does not seek to impose its will upon the Alabama Court but merely seeks to control the acts of a citizen of Georgia over whom it has jurisdiction in personam. The principle that the use of such injunctive relief in no way interferes with the courts of another state is well established and is recognized by this Court.

> "We are unable to yield assent to the statement of the court below that 'the restraint of a proper party is legally tantamount to the restraint of the court itself'. The reality of the distinction has illustration in a host of cases."
>
> *Steelman v. All Continent Corp.*, (1937) 301 U. S. 278, 291, 57 S. Ct. 705, 81 L. Ed. 1085, 1093.

Congress has no power to regulate procedure of state courts. This Court has recognized that state courts are now free to apply the doctrine of forum non conveniens in Liability Act cases. That doctrine is not available to

respondent in the case now under consideration because of the Alabama law. Since no remedy is available to respondent in the Courts of Alabama, it is compelled to resort to the Courts of Georgia for the relief to which it is entitled.

To now hold that the Georgia Courts are unable to grant relief by injunction because the case was filed in the State Court of Alabama when an adequate remedy would have been available if it had been filed in a Federal Court in that State would be a perversion of justice and the denial of substantial rights.

6. THE CASE OF BOYD v. GRAND TRUNK WESTERN RAILROAD IS CLEARLY DISTINGUISHABLE FROM AND IN NO WAY APPLIES TO THE CASE NOW UNDER CONSIDERATION.

Throughout this case counsel for petitioners have stressed the case of *Boyd v. Grand Trunk Western Railroad Co.*, (1949) 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55, and have strenuously argued that it substantiates their position. We differ with this conclusion and submit that the Boyd case involved an entirely different state of facts and was determined upon an entirely different question from those involved in the case now under review.

The sole question before this Court in the Boyd case was the validity of two contracts signed by an injured employee after an accident and in which he agreed to file suit only in either the state or district court where the accident occurred or where he resided at the time he sustained his injuries. This Court so stated.

> "In issue here is the validity of a contract restricting the choice of venue for an action based upon the Federal Employers' Liability Act."

Boyd v. Grand Trunk Western Railroad Co., (1949) 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55, 56.

The validity of the contracts in question was the sole basis upon which the case was decided in the state court, *Grand Trunk Western R. Co. v. Boyd*, (1948) 33 N. W. (2d) 120, 121, and no other questions were considered in passing upon the case. The Supreme Court of Michigan reversed the trial court, holding that the contracts were valid because they were executed after the injury was sustained. No other questions were presented or passed upon by any court.

The Boyd case was reversed by this Court on the sole ground that the contracts restricting a choice of venue were directly in conflict with Section 5 of the Federal Employers' Liability Act (45 U. S. C. A. Sec. 55) and for that reason were void.

Counsel for petitioners argue that there is great similarity between the Boyd case and the one now under review. This argument is without foundation. The only similarity is that in both cases the railroad asked for an injunction. In the Boyd case the right to enjoin was based squarely upon the provisions of the contracts under which the injured employee agreed to file suit only in certain courts. In our case the right to injunctive relief is based upon the broad powers of equity courts to restrain the prosecution of vexatious, oppressive and inequitable suits.

We fail to see any similarity between the two cases and submit that the Boyd case, supra, is not applicable to and in no way controls the issues here involved.

E. CONCLUSION.

The effect of Section 1404 (a) of the Judicial Code upon the Kepner and Miles cases, as declared in the prevailing decisions of this Court, has been correctly interpreted and construed in the decision now under review.

Prior to the decisions in the Kepner and Miles cases, state courts had the inherent power to restrain their citizens from prosecuting inequitable cases in foreign jurisdictions. The Kepner and Miles decisions were based solely on Section 6 of the Liability Act. They did not abrogate the inherent power of state courts but merely limited it in Liability Act cases. The power continued to exist. The enactment of Section 1404 (a) dissolved the binding force of these decisions as precedents. The doctrines laid down in the Collett and Mayfield cases now control and state courts are free to exercise their full equity powers in all cases.

Forum non conveniens permits the transfer of a case filed in a federal court if such transfer is in the interests of justice and convenience. The compulsion which was thought to have rested upon state courts by reason of Section 6 of the Liability Act no longer exists. It would be grossly inequitable to deny respondent the relief which the Supreme Court of Georgia has said it is entitled to obtain under the allegations of its petition. The Georgia Courts should be left free to follow their own practice and procedure.

The decision of the Supreme Court of Georgia is in full accord with the doctrines promulgated by Congress and enunciated by this Court in the Collett and Mayfield cases which are controlling.

We respectfully submit that the decision of the Supreme Court of Georgia should be affirmed.

Respectfully submitted,

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